

STATE OF CALIFORNIA

MEETING OF THE

CALIFORNIA INSPECTION & MAINTENANCE REVIEW

COMMITTEE

Tuesday, August 23, 2005

California Air Resources Board

1001 I Street, Coastal Hearing Room

Sacramento, California

1 **MEMBERS PRESENT:**

2
3 VICTOR WEISSER, CHAIR
4 TYRONE BUCKLEY
5 DENNIS DeCOTA
6 JOHN HISSEIRICH
7 GIDEON KRACOV
8 ROBERT PEARMAN
9 JEFFREY WILLIAMS

10 **MEMBERS ABSENT:**

11 PAUL ARNEY
12 BRUCE HOTCHKISS
13 JUDITH LAMARE

14 **ALSO PRESENT:**

15 ROCKY CARLISLE, Executive Officer
16 JANET BAKER, Administrative Staff

17
18

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P R O C E E D I N G S

1
2 CHAIR WEISSER: Well, ladies and gentlemen, I
3 want to welcome you to the August 23rd, 2005 meeting of
4 the Inspection and Maintenance Review Committee. It's
5 great seeing familiar faces after our hiatus of two
6 months. We have an interesting agenda here today and
7 one that I think will help move our agenda forward of
8 attempting to improve the Smog Check Program to the
9 greatest extent possible. I also want to welcome any
10 folks that are listening in via the webcast, and if
11 there's a number that they need to call, can someone
12 give me that number?

13 MR. CARLISLE: The number is (866) 819-0734.

14 CHAIRMAN WEISSER: Let me repeat that just in
15 case, (866) -

16 MR. CARLISLE: 819.

17 CHAIRMAN WEISSER: 819.

18 MR. CARLISLE: 0734.

19 CHAIRMAN WEISSER: 0734.

20 MR. CARLISLE: The pass code is 912774.

21 CHAIRMAN WEISSER: Pass code is 912774. Of
22 course, those folks if they heard that number are
23 already on the line but maybe there's some other
24 benefit that will serve that frankly escapes me at this
25 moment.

1 I'd like to first start off by introducing
2 the members that are here today. We'll do self-
3 introductions as we always do. We'll start from my far
4 right with Gideon.

5 MEMBER KRACOV: Good morning, my name is
6 Gideon Kracov from Los Angeles. I'm an attorney and a
7 public member of this Committee.

8 MEMBER PEARMAN: Robert Pearman from Southern
9 California, a public member.

10 MEMBER DECOTA: Dennis DeCota, representing
11 the automotive repair industry.

12 CHAIRMAN WEISSER: And the fact that a large
13 space exists between Dennis and I as we sit is not
14 reflective of anything other than a large space. I'm
15 Vic Weisser, the Chair of the IMRC.

16 MEMBER BUCKLEY: I'm Tyrone Buckley, also a
17 public member.

18 MEMBER WILLIAMS: I'm Jeffrey Williams,
19 public member.

20 MEMBER HISSERICH: I'm John Hisserich, a
21 public member.

22 CHAIRMAN WEISSER: Well, I hope everyone's
23 summer has been as interesting and at some times
24 challenging as mine has. And before we start I want to
25 just reflect upon one event that occurred to me in

1 July, because I think it bears upon how we go about
2 doing our business in public policy.

3 I had the good fortune of being able to take
4 my godson, a 13-year-old kid, along with his cousin to
5 meet a third cousin in Amsterdam in the Netherlands. I
6 had traveled to the Netherlands several times over the
7 last decade, principally meeting with government
8 officials and members of their parliament on the
9 Netherlands' green planning approach toward achieving
10 their environmental objectives. But one of the things
11 that was very unusual, that seemed very unusual for me
12 coming from the States, was this underlying approach
13 that the Dutch seem to take to deal with public policy.
14 It's called the Polder approach, P-O-L-D-E-R, and I saw
15 it at work in Parliament. What the Polder approach
16 comes from is the history of Holland.

17 You'll know that Holland is a country that
18 has survived based upon its ability to reclaim land
19 from the ocean, and to turn that land into productive
20 use both in terms of agriculture and industry. Now for
21 a society to do that, they have to learn how to work
22 with one another. Even when they may not like who
23 they're working with or even when they may disagree
24 with whom they're working with, they don't have a
25 choice. If they don't work together, if they don't

1 figure out how to work together, they're not going to
2 get the dykes built and guess what, that ocean is going
3 to rush back in.

4 Well, frankly, hundreds of years ago,
5 centuries ago, the Dutch figured it out. They figured
6 out how to achieve consensus and move forward in a
7 collaborative fashion and in a sustainable fashion so
8 that their society could in fact survive. Sustainable
9 in that when they approach an issue, they don't
10 approach it from frankly the way I see most of
11 California and America politics work out. Our approach
12 in politics tends to be I win, you lose. Their
13 approach seems to be, how can we kind of solve this
14 problem and move forward so that we can work together
15 over the long run.

16 Now I only saw this at the highest levels in
17 government in the ministries of, you know, the various
18 departments in Holland. At Parliament when I've gone
19 to Parliament and met with parliamentary leaders, they
20 would argue with each other during the sessions.
21 Afterwards, they'd go out and have a beer with one
22 another realizing they were going to have to work
23 tomorrow together. But I never saw this at work at
24 the, you know, the people level until this trip.

25 One of the kids that – one of the cousins who

1 I went with, unfortunately his mom had died about a
2 decade ago. Fortunately for him, he inherited a nice
3 little apartment in central Amsterdam, one of six
4 units, buildings, that were part of what we would
5 characterize as a homeowners association. Well,
6 someone was trying to buy one of the buildings and they
7 found out that the subcontractor-structure needed major
8 foundation work.

9 Now in the United States if you had a
10 homeowners association and an issue like that arose,
11 you would immediately find the interests – in other
12 words who should pay for that repair – at war. Who
13 should pay for it, the buyer, the seller, the
14 homeowners association, and how do you figure that out?
15 Well, in the United States the way we figure it out is
16 everybody runs out and hires a lawyer and sues
17 everybody and X number of months and X number of
18 thousands of dollars in legal fees later a decision is
19 handed down.

20 What the Dutch do is really different. They
21 bring everybody together and they sit down and they
22 start talking and everybody gets to talk, and they
23 don't push toward resolving the issue, but they do push
24 toward figuring out a path forward that will allow the
25 problem to be addressed and also allow folks to live

1 with each other in the future. It was pretty
2 remarkable and I'm going to just stop with that little
3 vignette and move on to the meat of our agenda.

4 - o0o -

5 We're going to start with the approval of the
6 Minutes from our last meeting, which was June 28th,
7 2004 (sic). Has everybody had a chance to review the
8 minutes? Is there a motion so that we can adopt the
9 minutes as presented?

10 MEMBER DECOTA: Mr. Chair, on the item number
11 two, I'd officially like to go on record that I was,
12 that I am not in support of that motion. I was absent
13 that day. I don't know what that means, but officially
14 on the record I am not as a Committee member completely
15 in agreement with the report.

16 CHAIRMAN WEISSER: Just to be clear, this is
17 the report that was the Consumer Information Survey?

18 MEMBER DECOTA: Correct.

19 CHAIRMAN WEISSER: And you disagree with the
20 report. You weren't present at the meeting?

21 MEMBER DECOTA: Unfortunately, I was not.

22 CHAIRMAN WEISSER: But we'll note that you
23 don't agree. Do you want to be a little more specific
24 or do you just want to let it out that -

25 MEMBER DECOTA: No, at this point in time I

1 just feel that it lacks the proper investigation to
2 commit to the Legislature a report of its nature on its
3 limited scope.

4 CHAIRMAN WEISSER: Well, so noted. Are there
5 any other comments regarding the minutes?

6 MEMBER PEARMAN: I move approval.

7 CHAIRMAN WEISSER: Okay, Mr. Pearman has
8 moved for approval. Is there a second?

9 MEMBER HISSERICH: Second.

10 CHAIRMAN WEISSER: Mr. Hisserich has
11 seconded. Any discussion? All in favor, please
12 signify by saying, Aye.

13 IN UNISON: Aye.

14 CHAIRMAN WEISSER: All opposed? Hearing no
15 opposed, the minutes are unanimously adopted.

16 - oOo -

17 CHAIRMAN WEISSER: Our next item will be a
18 report from David Howe of Strategica on the BAR
19 Enforcement Monitor Update. Mr. Howe?

20 MR. CARLISLE: Mr. Howe's not here yet, so I
21 would suggest that we defer that.

22 CHAIRMAN WEISSER: And we'll then, Rocky,
23 move into your turn in the hole. We'll have Executive
24 Officer's Activity Report. Rocky?

25 MR. CARLISLE: Thank you, Mr. Chairman,

1 members of Committee. It's been a busy month, actually
2 a busy couple of months. One thing that I should
3 mention, this report that we just discussed, the
4 Consumer Information Survey, has been at this point
5 finalized and forwarded to the Legislature and the
6 Administration as well as other interested parties.
7 There are copies in the back for public members that
8 want that.

9 One of the things the Committee asked me to
10 do at the last meeting was attend a BAR's, what they
11 call the BAG meeting, BAR Advisory Group. And I did
12 so, that was in July, and Chief Ross handled the
13 meeting. He stated that the BAR website, for one, was
14 undergoing a significant review. Anybody that's been
15 on that website knows it contains a wealth of
16 information, and so they've been developing it with the
17 use of a contractor and hopefully that's going to be
18 online very shortly. It's supposed to be more consumer
19 friendly as far as accessing data because there is so
20 much information on that website sometimes it's a
21 little difficult to get what you're looking for
22 quickly.

23 BAR is also working with the Communications
24 and Education Division to publish the *Repair Report* and
25 the *Smog Check Advisory* in a consistent and timely

1 manner. These are publications that go out to the
2 industry on a regular basis. They're trying to make
3 them more consistent, if you will.

4 They're also expanding the Breathe Easier
5 Campaign. That was one of their campaigns they started
6 several months ago and one of the things they're doing
7 is trying to encourage involvement with CALEPA and
8 Health Services and just explain to people that, you
9 know, the Smog Check is not just about getting the car
10 smogged, it's really about the health and the
11 environment for people.

12 And most of these things - I don't mean to
13 put Mr. Amos on the spot but maybe he can enhance the
14 update on these a little bit because this is about two
15 months old.

16 BAR is also developing an educational program
17 for station technicians that fail to achieve emissions
18 reductions of emissions related repairs. As you know,
19 not all the stations attain the same emissions
20 reductions if a vehicle fails. Some get a little bit
21 of reduction and some get very high emissions
22 reductions. So they're working on an educational
23 program for the technicians.

24 CHAIRMAN WEISSER: Rocky, let me interrupt
25 you for a moment. This is for failing vehicles?

1 MR. CARLISLE: Correct.

2 CHAIRMAN WEISSER: In other words, the
3 performance of the vehicles after repair varies
4 significantly or a little?

5 MR. CARLISLE: I would probably say
6 significantly, yes.

7 CHAIRMAN WEISSER: Uh-huh, between station to
8 station?

9 MR. CARLISLE: Right. And the bottom line of
10 a lot of that is the function of how much money was
11 spent on the repair as well, so it's kind of a double-
12 edged sword, if you will.

13 It was also mentioned that USEPA is
14 conducting a repair durability study on the east coast,
15 and so they're looking at that and also evaluating
16 methods of evaluating their own station performance,
17 you know, for the Smog Check stations along with that
18 study. And their next meeting is scheduled for October
19 17th, which I will attend that one as well.

20 In addition, we started a preconditioning
21 survey, one of the issues we've been looking at for a
22 while. We started that July 28th. To date, we have 95
23 surveys completed and it's actually been a little
24 easier than what we had anticipated. We spent probably
25 the first week streamlining the process so now we're

1 completing about 12 to 15 calls per day, and hopefully
2 by the end of the month we'll have all the data, not
3 this month but the month of September, we hope to have
4 all the calls completed so we can start the data
5 analysis on that. But on the initial cut, if you will,
6 it looks like the problem of having a vehicle fail at
7 one station and come back and pass at another is less
8 than .5 percent of all tests, and so it's really a
9 small number when you consider the number of tests we
10 do. But we haven't -- you know, that's just a
11 preliminary cut, you know, with the data.

12 CHAIRMAN WEISSER: Let me make sure I
13 understand that one-half of one percent of vehicles
14 which fail at one station, when they are tested
15 immediately thereafter at a second station, pass?

16 MR. CARLISLE: Yes.

17 CHAIRMAN WEISSER: Without repair?

18 MR. CARLISLE: Yes.

19 CHAIRMAN WEISSER: And one-half of a percent
20 is -- how many cars is that?

21 MR. CARLISLE: I would have to do the math
22 real quick and I --

23 CHAIRMAN WEISSER: How many cars are there in
24 California?

25 MR. CARLISLE: There's quite a few cars,

1 okay?

2 CHAIRMAN WEISSER: So is it tens of
3 thousands, Rocky?

4 MR. CARLISLE: Yes, I would say it's tens of
5 thousands overall in a year's period of time. And most
6 of it in talking with technicians appears that it may
7 be an issue with preconditioning and the variability
8 thereof. In other words, some stations will run the
9 car for three minutes at 2500 rpm, other stations are
10 just letting it idle. So there's just all different
11 manners, if you will, of the preconditioning process,
12 or the warmup process. And so maybe by standardizing
13 that process, we would reduce that number. But I just
14 throw that out there, that's what it looks like in the
15 initial stages of the survey.

16 We have also, like I mentioned, submitted the
17 copy of the Consumer Information Survey that's been
18 sent out.

19 Next month I've asked Dr. Tom Cahill to make
20 a presentation regarding smoking vehicles and its
21 health effect in the Sacramento region. He recently
22 released a report for the American Lung Association and
23 that seems to be getting a lot of press lately. Even
24 though we recommended, if you will, a smoke test to the
25 Legislature the first part of the year, it's coming

1 around for the second time, if you will.

2 And finally, I'm making arrangements to meet
3 with Dr. Steadman in L.A. in October. He's going to
4 have a demonstration project off of I-10 in La Brea for
5 remote sensing and he's invited anybody that wants to
6 meet him down there to watch the demonstration, see how
7 the equipment operates and see how they collect the
8 data.

9 CHAIRMAN WEISSER: Do you know anything about
10 the demo?

11 MR. CARLISLE: I don't. It's going to be, I
12 believe, for about four days. I believe it's the 17th
13 through the 22nd, so four or five days.

14 CHAIRMAN WEISSER: He's doing this on behalf
15 of the South Coast Air Quality Management District?

16 MR. CARLISLE: I believe so, yes. And that,
17 Mr. Chairman, concludes my Activity Report.

18 One thing, let me -- a little premature. I
19 just wanted to update you on one thing. One thing that
20 was handed to me was the --

21 MEMBER HISSERICH: Rocky, just one second.
22 My note here says that he's going to be doing that from
23 6:00 a.m. to 5:00 p.m.

24 MR. CARLISLE: Correct.

25 MEMBER HISSERICH: That test, okay.

1 MR. CARLISLE: You don't have to be there at
2 6:00 a.m.

3 MEMBER HISSERICH: I won't. Okay, thanks.

4 MR. CARLISLE: And like I say, if anybody
5 from up here wants to attend, let me know and I'll make
6 transportation arrangements for them.

7 CHAIRMAN WEISSER: Is it open to the public,
8 do you know?

9 MR. CARLISLE: That I don't know.

10 CHAIRMAN WEISSER: But perhaps if people or
11 members of the public are interested they could contact
12 Rocky. He in turn could contact either the district or
13 Dr. Steadman.

14 MR. CARLISLE: Right.

15 CHAIRMAN WEISSER: I just don't know if the
16 physical location will permit a large number of people
17 or any other people.

18 MR. CARLISLE: The vans I think are kind of
19 small but, you know, a couple of people at a time it
20 probably accommodates with no problem.

21 CHAIRMAN WEISSER: Okay.

22 MR. CARLISLE: Okay, one thing has changed
23 with regard to the BAR referee. And I gave you a copy
24 of this Consumer Assistance and Referee Bureau of
25 Automotive Repair Price List, that's effective

1 September 1st of '05. And one of the things you'll
2 notice, they are now charging consumers different costs
3 for various functions. For example, a repair cost
4 waiver is now \$60. A CAP repair cost waiver is also
5 \$60. If you have an alternative fuel conversion, for
6 example, it's going to be \$75 for the inspection.
7 Military vehicles will be \$65. So the prices really
8 range from what they used to be, just a straight \$30
9 for everything that came through the door. Grey
10 market vehicle is \$70. And I think the idea was that a
11 lot of these issues are consumer option. For example,
12 if the vehicle – or the vehicle owner changes the
13 engine in their vehicle, that was a decision they made,
14 so I think it passes the cost along to them for that
15 inspection because they do take more time and they are
16 more involved.

17 MEMBER HISSERICH: Just a question if I may,
18 Mr. Chairman?

19 CHAIRMAN WEISSER: Please.

20 MEMBER HISSERICH: When it says military
21 vehicles, is that somebody who has it in private
22 ownership or something, if they own a tank or, I mean,
23 I'm just wondering what that is.

24 MR. CARLISLE: Military owned vehicles.

25 MEMBER HISSERICH: Really?

1 MR. CARLISLE: Military personnel are
2 required to have a Smog Check.

3 MEMBER HISSERICH: And we get a little extra
4 for them because, what, they're in uniform or
5 something?

6 MR. CARLISLE: I guess so, yeah.

7 MEMBER HISSERICH: Okay.

8 MR. CARLISLE: And actually I think they can
9 normally – they can normally go anywhere and get that
10 inspection.

11 MEMBER HISSERICH: Okay, I didn't realize,
12 \$65.

13 MR. CARLISLE: I think what this represents
14 is closer to the true cost of actually conducting an
15 inspection at the referee site.

16 CHAIRMAN WEISSER: Well, you know, the notion
17 of having the consumer cover all or part of the cost
18 when the consumer is the cost causer sounds like it
19 makes sense to me.

20 MR. CARLISLE: Right.

21 CHAIRMAN WEISSER: I don't know if there's
22 any reactions?

23 MR. CARLISLE: No, I would agree. I think
24 too that if you notice the low income and economic
25 hardship extensions, they're free, so the people who

1 need the assistance still can obtain the assistance
2 through the consumer – you know, through the referee.

3 CHAIRMAN WEISSER: Okay, any questions?

4 Rocky, you made mention of, you know, the education
5 program aimed at the stations, and I think earlier you
6 talked about some information programs that BAR was
7 developing to kind of outreach to the public. And I'm
8 struck – I don't know if you folks have heard these ads
9 on the radio that are being put out by Caltrans as part
10 of the State's kind of storm water management program.
11 These are public service ads that are – they're quite
12 well done in having folks realize that if they dump a
13 can of cigarette butts out on the street, those are
14 very likely to wash down a storm drain or culvert on
15 Caltrans land and many of them will end up either
16 going to the ocean and causing problems there, or going
17 to streams and causing problems there, or going into
18 ground water and causing problems there. So it's kind
19 of a public education campaign on each and everyone's
20 responsibility to think smart about the environment.

21 I'm only bringing this up because I would
22 urge folks at BAR and ARB to take a look at this ad
23 campaign. It seems to me to be one of the more far
24 reaching, maybe it's just the Bay Area, but frequently
25 played environmentally-oriented ad campaigns put on by

1 a public agency that I've seen, and I think we can
2 learn something from that.

3 Any questions or comments? Any comments from
4 the audience to the executive director's report? We'll
5 start with Mr. Peters.

6 MR. PETERS: Mr. Chairman, Committee, I'm
7 Charlie Peters, Clean Air Performance Professionals. I
8 had a couple of questions about Mr. Carlisle's
9 presentation.

10 CHAIRMAN WEISSER: Mr. Peters, I'm going to
11 interrupt you for a moment. The light is not
12 functioning, so I'll try to give you -

13 UNIDENTIFIED SPEAKER: Right here, it's
14 clicking away -

15 CHAIRMAN WEISSER: Well, it ain't working.
16 So I'll try to give you a high sign where on my watch
17 we're getting close to three minutes, Charlie. Please
18 continue.

19 MR. PETERS: Couple of questions about Mr.
20 Carlisle's presentation. And the second one was the
21 issue brought up about the percentage of vehicles which
22 are inspected and failed at one station and go to a
23 second station and pass in a short time frame. That's
24 an issue that I have brought to the Committee
25 continuously and I find that very interesting in that

1 the provider of service is provided the information
2 before he starts that the car failed somewhere else, so
3 he has all of the information to protect himself from
4 anybody looking and finding out that he passed a car
5 that failed someplace else.

6 We are the ones that brought that issue up
7 probably to start with, and our position is that the
8 notification of the provider that it failed somewhere
9 else should not take place until after the decision to
10 pass it. That might very well very significantly
11 change that statistic and point to places to look for
12 improving quality. But when we inform the station that
13 the car failed somewhere else before he starts to do
14 the inspection, he can certainly protect himself from
15 that possibility. Item two – go ahead.

16 CHAIRMAN WEISSER: That informing occurs via
17 the electronic hook-up of the car when it's tested at
18 the second station or from the consumer?

19 MR. PETERS: The TAS machine notifies the
20 provider that the car has failed at another station
21 previously in a short time frame.

22 CHAIRMAN WEISSER: Thank you.

23 MR. PETERS: So that provides significant
24 protection from being detected as a person who passes
25 cars that should fail.

1 CHAIRMAN WEISSER: So you think then it would
2 result in a higher fail rate than if they had not been
3 informed?

4 MR. PETERS: I believe that it could result
5 in a very significant improvement in program
6 performance by improving the ethics and basically
7 making every car that's tested potentially an
8 undercover car, because you certify it before you're
9 exposed that you're certifying somebody else's
10 failures.

11 CHAIRMAN WEISSER: Thank you.

12 MR. PETERS: And we also believe that that
13 car -- a very small percentage of those cars should be
14 referred for review before they're certified to demand
15 improved performance in the market in its entirety.

16 The other issue was the issue brought up,
17 just kind of a statement of fact that was thrown in
18 there that the emissions reductions are related to the
19 amount of money that the consumer spends. I believe
20 that could certainly be a factor, but if somebody is
21 failing a lot of very high-emitting cars, their
22 reductions may very well be much less expensive because
23 they may be simple things, whereas cars where somebody
24 deals primarily in late-model cars and it's
25 sophisticated kinds of things, gets very small

1 reductions at high costs, so just making that -
2 accepting that as a statement of fact, I would suggest
3 further investigation before that's accepted as a
4 statement of fact. Thank you, Mr. Chairman.

5 CHAIRMAN WEISSER: Thank you, Mr. Peters.
6 Mr. Carlisle?

7 MR. CARLISLE: Just a comment. First of all
8 technicians, unless they actually go into the website
9 to query the DMV data, or the VID as to whether or not
10 a vehicle passed a vehicle test, they have no
11 knowledge. One of things we are finding out that in
12 some cases the technicians do have prior knowledge of a
13 fail and in some cases they don't, but that's one of
14 the things we're going to look at as far as the
15 correlation to those.

16 With regard to the second point, I would
17 agree with that, you know, cost is not always the
18 issue.

19 CHAIRMAN WEISSER: And Mr. Peters, I'll let
20 you make a 30-second statement.

21 MR. PETERS: I find that response interesting
22 and I certainly could be wrong, but I believe that if
23 the car has previously failed before the test is
24 started the technician is notified of same.

25 CHAIRMAN WEISSER: Okay, well we can check

1 that out. Thank you. We'll take a next comment.

2 We'll get back to you. Good morning, Chris.

3 MR. ERVINE: Good morning. Cris Ervine with
4 Coalition of State Test and Repair Stations. I had a
5 question concerning -- and hopefully Rocky's not going
6 to run out on me here.

7 CHAIRMAN WEISSER: We guarantee you he won't.

8 MR. ERVINE: Okay. His statement, his
9 original statement was it was .5 percent of the
10 vehicles tested, and then when you re-questioned him it
11 sounded like you changed the rules around and I would
12 like to find out exactly what percent this .5 percent
13 was of.

14 MR. CARLISLE: Tested.

15 MR. ERVINE: Total vehicles tested.

16 MR. CARLISLE: Yes, so far.

17 MR. ERVINE: Okay, so then that's a very
18 large number.

19 CHAIRMAN WEISSER: Seems like it to me.

20 MR. ERVINE: Especially when you stop to
21 think that we're dealing with less than 18 percent of
22 the vehicles failed smog, and then of the 18 percent
23 that failed smog only 8 percent are going to a CAP
24 station. CAP stations are the only ones that are
25 allowed to retest a failed smog. And of the 8 percent

1 of the 18 percent, we have .5 percent of the total, so
2 now we have a huge percentage of vehicles that are
3 passing on the second time around. So don't let these
4 numbers scare you here. We're talking about a large
5 number of vehicles and I think that you all need to be
6 aware of that.

7 Also, something that needs to be taken into
8 consideration - (dropped microphone) I don't know, I
9 guess I'll have to hang onto it.

10 CHAIRMAN WEISSER: Do we need a technical
11 assistant up there?

12 MR. ERVINE: Rubber band.

13 CHAIRMAN WEISSER: Rubber band might work,
14 okay. During the break we'll ask that that be fixed.

15 MR. ERVINE: One of the other things to take
16 into consideration too is we are a CAP station. We see
17 a large, what I feel is a large percentage of vehicles
18 that are passing the initial test after it's failed
19 without any repairs being done at anyplace else. The
20 other thing to consider is that of these vehicles that
21 come back to our station and pass on emissions, there's
22 a large percentage of those that we find that have a
23 failure in another area, usually in the visual or
24 functional test. Because once the test-only station
25 finds that the vehicle fails for emissions, they quit

1 looking and they don't enter any of the other
2 information in there.

3 CHAIRMAN WEISSER: Uh-hmm.

4 MR. ERVINE: And this is a common practice
5 among in our area of the test-only stations.

6 As to something that was brought up here,
7 knowledge of a previous fail, as soon as you punch in
8 the VIN on that vehicle, the VID brings up and it says
9 that this vehicle failed. It doesn't give you any of
10 the specifics about what the failure was, only that it
11 failed either the visual, the functional or the
12 emission test, and it gives you a date.

13 CHAIRMAN WEISSER: Thank you very much.

14 MR. ERVINE: All -- Everybody knows when a
15 vehicle has failed previously.

16 CHAIRMAN WEISSER: Thank you. Bud. While
17 you're coming up, we'll bring in our space shuttle
18 expert to attach the rubber band. I might indicate
19 that if we're unable to immediately, you know, get a
20 fix, you can hold onto that and proceed and we have
21 that wired into the red light so that if you go over
22 your speaking time you'll receive an unpleasant shock.

23 MEMBER HISSERICH: All right, Mr. Chairman.
24 I have a question while we're going through the
25 repairs.

1 CHAIRMAN WEISSER: Yes, John.

2 MEMBER HISSERICH: How do they do decoy

3 vehicles if when you put the VIN in, it tells you when

4 it was tested?

5 MR. CARLISLE: That's covered by BAR

6 enforcement.

7 MEMBER HISSERICH: They have a way of doing

8 that? Okay, just wondering.

9 CHAIRMAN WEISSER: Bud?

10 MR. RICE: Here we go. So I'm not in my

11 space suit, I'm not looking for foam.

12 CHAIRMAN WEISSER: Introduce yourself, Bud.

13 MR. RICE: I'm sorry. Bud Rice with Quality

14 Tune-Up Shops. Two quick comments. I was doing the

15 same thing that Chris was doing as far as the math goes

16 so I want to bring that up as well. Last time I had

17 testified in front of the Committee, I was talking

18 about the preconditioning items as well and my concern

19 there. One comment I made was that I thought we ought

20 to test them as they roll at the time that I was

21 saying. When Rocky was talking about standardizing -

22 coming up with some kind of a standardized

23 preconditioning sequence, I would heartily agree that

24 that's something we need. I think when I brought it up

25 last time, there really wasn't anything like that nor

1 was there anything provided from the BAR about a
2 standardized approach. So if we moved to a
3 standardized preconditioning sequence I think that
4 would be great.

5 Next comment I wanted to make, and it's the
6 final comment I have on this area here, is that when
7 the referee -- I guess I'm asking for a little guidance
8 here. When the referee can move pricing in terms of
9 what they charge for waivers and that kind of thing,
10 there aren't true market conditions in play. I wasn't
11 sure whether or not contracts specifically stated that
12 they were going to do this or do that, or if there was
13 any oversight, or if they could just kind of charge as
14 they saw fit without any kind of a back-up saying this
15 is how much it actually costs to do this work and this
16 is what we're passing on to the consumer. Thank you.

17 CHAIRMAN WEISSER: Well, I can't answer that
18 question. Rocky is shaking his head that he can't
19 answer the question. I notice the price sheet is on
20 Department of Consumer Affairs letterhead. And I
21 suspect that perhaps the Department might be able to
22 clarify that these are set by the Bureau. And perhaps
23 they could explain upon what basis the prices are set
24 if they're able to.

25 Are there further comments on the report from

1 the executive officer? I do want to highlight the item
2 that Rocky raised associated with the smoking vehicles.
3 I received yesterday an article that appeared in the
4 *Sacramento Bee* in their science section on smoking
5 vehicles. And it is an issue that we've talked about
6 and that the Bureau has reported on and one that I
7 think we're going to be wanting to look at more closely
8 and more aggressively over the next several months. In
9 fact, I think we're going to find the Bureau also
10 looking at it very closely and be interested to hear
11 what they have to say.

12 - o0o -

13 That being said, I notice from his picture
14 that Mr. Howe has arrived from Strategica. And perhaps
15 we could shift back now and have his presentation on
16 the BAR Enforcement Monitor. Mr. Howe?

17 MR. CARLISLE: Before he begins, if you look
18 at tab number two, there's brief information on Mr.
19 Howe. In addition, I have also included the
20 requirements of SB 1542, statutes of 2004, which were
21 the requirements set forth for the Enforcement Monitor
22 in addition to some enforcement issues identified for
23 the Sunset Review Committee.

24 MR. HOWE: You really have my picture?

25 CHAIRMAN WEISSER: We not only have your

1 picture but it's now being broadcast over the Internet,
2 so you'll be getting funny and interesting offers for
3 investment from Bangladesh this afternoon.

4 MR. HOWE: That's great, I'm looking for some
5 good investments. Your intelligence is outstanding by
6 the way, very few people have my picture.

7 Well, I want to thank you for inviting me to
8 address your Committee by the way. I haven't met any
9 of you yet, so I'm not quite sure how my project
10 overlaps with the duties of your Committee, but I
11 appreciate the opportunity to speak nonetheless. I do
12 have a presentation. I'm assuming that you are able to
13 see it on some screen device in front of you or up
14 above.

15 CHAIRMAN WEISSER: Yes, we are interrupting
16 the Simpsons in order to watch your presentation, Mr.
17 Howe.

18 MR. HOWE: Excellent, okay. Well, let me
19 just walk through this. It's going to take around 15
20 minutes and I want to leave some time at the end for
21 questions and answers. And if there's not sufficient
22 time I'll give you my name and phone number if you
23 don't already have it, you already have my picture, and
24 you're more than welcome to call me regarding this
25 project and any suggestions you might have.

1 [Begin presentation]

2 This enforcement monitoring project was the
3 creature of the Business Professions Committee in the
4 California State Senate, and I think there was a lot of
5 reasons why it came into being. I think to try to boil
6 it down, there was a lot of discomfort on the part of
7 industry about the enforcement and disciplinary methods
8 that are used by the Bureau of Automotive Repair, so
9 they asked me to spend some time, a couple of years
10 actually, looking at these methods and determining
11 whether they were fair, whether they respected due
12 process, the due process rights of licensees and
13 registrants, and if there was a better way to ensure –
14 hold on just a second. (Phone ringing)

15 CHAIRMAN WEISSER: That's your first call
16 from Bangladesh.

17 MR. HOWE: Yes, thanks. Sorry, I normally
18 turn this off but I forgot.

19 As well as to come up with some good ideas as
20 to how to make the disciplinary process better.

21 My background is I've been consulting since
22 the mid-eighties, since early nineties mostly, with
23 public sector agencies. I specialize in regulatory
24 agencies, land use agencies, licensing agencies, also
25 elections and social services, so I've been doing this

1 a long time. What I've done thus far – see the
2 technology is always the hard – there we go, got it.

3 What we've done thus far in this project is
4 we had an entrance conference way back in March, and
5 then we didn't get a contract for about three weeks so
6 there was a little bit of a delay there, but we finally
7 got going in mid-April. We met with several industry
8 stakeholders, we've done about 42 interviews of BAR
9 employees, legislative staffers, advocates, regulatory
10 staff, read a lot of documents, looked at what we feel
11 would be the essential elements of due process in a
12 regulatory environment like this.

13 We did a lot of what I would call ride-
14 alongs, and that is where we go out in the field with a
15 BAR representative just to see how they interact with
16 industry members, go out on complaint calls, go talk to
17 consumers that have filed complaints. And we did a lot
18 of these all up and down the state. It's a great way
19 to kind of just get a feel for what actually happens in
20 the field. Plus you get a lot of good information from
21 program repairs, because once you're along with them in
22 a car they will tell you just about anything so it's a
23 good source of information.

24 We did observations at mediation centers. We
25 also sat in on office conferences, administrative

1 hearings. We just really wanted to get a feel for how
2 the program works on the ground, really on the cold
3 face. We also did a number of industry forums around
4 the state, a couple in southern California, a couple in
5 northern California, where we invited members of
6 industry to come in and talk to us. We mapped the
7 processes that are used for investigating complaints
8 and handling disciplinary matters.

9 We did an extensive case audit as well where
10 we put out a criteria for certain types of cases we
11 wanted to look at just to see if they were handled in a
12 fair and equitable manner, and then we also selected
13 some cases at random and then drew some conclusions
14 based on what we saw. And then we also looked at some
15 other regulatory agencies within the state, Alcohol
16 Beverage Commission and the Contractor State Licensing
17 Board.

18 So we've done a lot of work and we're
19 actually at the point now where we're putting together
20 some preliminary findings, and we'll start writing the
21 report very soon. However, this is just going to be a
22 draft report, it won't be finalized probably until the
23 end of the year. And then there's a couple of other
24 reports that come after that during 2006 to kind of
25 finally refine all those suggestions that we're going

1 to come up with.

2 Let's see if I got the right button – here we
3 go. Global observations. Before I get into some real
4 detailed findings, just globally what we saw was that
5 the field staff that we observed were universally
6 professional, well-prepared, polite and objective, and
7 they certainly were firm in a lot of situations. But
8 we didn't – We heard a lot of horror stories about a
9 lot of heavy-handed behavior out on the field and I
10 certainly didn't see any out there. Now granted they
11 knew who I was and what I was doing there so maybe I
12 didn't a completely unbiased sample, but what I saw I
13 felt was professional behavior.

14 Again, with the office conferences they were
15 firm and they certainly weren't there to slap people on
16 the back and tell them what a good job they were doing,
17 but they were firm and I thought they were fair and
18 professional. The licensees were treated well. Cases
19 were mostly complete and well-documented. There was
20 some inconsistency in the style that they were
21 documented but all the elements of a decision were
22 there.

23 Mediation staff were polite and objective. I
24 thought the staff identified strongly with the mission,
25 which is something you typically see in regulatory

1 agencies. I've dealt with a lot, and usually the staff
2 identifies very strongly with what they're trying to
3 do. You don't necessarily see that in all government
4 agencies but you do see that in regulatory agencies and
5 some other environments as well.

6 Now, I don't know how many of you saw the
7 original bill that came out from the Business
8 Professions Committee but it had a number of bulleted
9 line items in the scope of work. And what I did after
10 some initial investigation was I rewrote it in such a
11 way that it just made more sense for the project, made
12 more sense for what I think was going to be – was going
13 to come out of the project and also make it more
14 accessible for the casual reader, and the way I did
15 that is I sort of rephrased the scope of work in a
16 series of big questions, and there were about six or
17 seven big questions.

18 The first one is, Does the BAR disciplinary
19 process provide for due process? What I found was that
20 most of the elements are there, either in BAR policies
21 or the Administrative Procedures Act. There are some
22 troublesome elements. One is this whole notion of
23 where the DCA director does not necessarily have to
24 adopt the decision of an administrative law judge, it's
25 called a non-adopt. And you don't see that in most

1 states where they're using something similar to the
2 Administrative Procedures Act, it seems to be unique to
3 California. And I know there are reasons for having it
4 there but what it does is it gives you a situation
5 where you don't necessarily have an unbiased referee,
6 which is pretty key for having good due process. And
7 there's a lot of feeling that there's a disincentive to
8 seek a hearing and I would agree to that.

9 It's also limited discovery rights in the
10 APA. They don't allow for depositions or
11 interrogatories. There's is also no provision for
12 recovery of legal fees if none of the allegations are
13 proven, and in other states you have that, where a
14 respondent can get full costs – can get all their legal
15 fees back if none of the allegations are proven.

16 However, the rub here is that full due
17 process rights may not actually be required because the
18 granting of a license is not a right, it's a privilege,
19 and whenever we have a privilege as opposed to a right
20 granted to somebody you don't necessarily get all –
21 you're not supposed to get all due process provisions,
22 so there's a balancing act there and I guess my
23 objective here is to figure out is the balance correct.

24 One area I'm exploring is the notion of an
25 independent appeals board which would accept any case

1 on appeal once it had gone through the usual process
2 where it goes through administrative hearing and an ALJ
3 looks at it and comes up with a decision. DCA director
4 would look at it, adopt it or not adopt it. At that
5 appoint it could go to an independent appeals board.
6 And in this case the appeals would pretty much be based
7 on the case as it's presented, what's called a paper
8 trial. You could have maybe some limited testimony,
9 five or ten minutes of testimony from either side, but
10 no new evidence, no new witnesses called, nothing like
11 that, so that way the appeals board can get through the
12 appeals fairly quickly.

13 I realize it's going to be a tough sell to do
14 something like this but I actually think it would help
15 in a lot of cases. I found a couple of cases where
16 personally I felt that the decision did not meet the
17 degrees of the violations and I think an appeals board
18 would help in these few cases where, you know, the
19 facts are a little bit more complicated.

20 More on due process. I looked at the office
21 conferences. I mentioned earlier that I felt they were
22 firm but fair. However, I think some of the
23 documentation needs improvement particularly on the
24 CPO's side, this is the auto repair side not the Smog
25 Check side. Smog check documentation I felt was pretty

1 good and I'd like the repair side actually to match
2 what they do on the Smog Check side for documenting
3 office conferences.

4 There's a lot of annoyance in the industry
5 about records inspection where a BAR rep can come out
6 and essentially look at any record in a repair
7 business. And the thought is that, hey, it should be
8 based on probable cause. Well, in researching the case
9 law, that's not necessarily the case. It really does
10 not need probable cause in this particular regulatory
11 environment. I realize it's an annoyance but it is
12 backed up by case law and it's backed up by statute, so
13 it's just one of those frustrations that is going to
14 have to probably have to stay there.

15 There's also looked at mandatory and/or
16 voluntary binding arbitration which would enhance the
17 mediation services. Mediation can only go so far, they
18 can't actually impose any kind of resolution on a lot
19 of cases. They really leave it up to the auto repair
20 dealer to come up with a solution. Unless there's any
21 violation of the Auto Repair Act or the Health and
22 Safety Code, they pretty much have to let the matter
23 drop. CSLB has a model that's worth looking at where
24 they have mandatory and voluntary binding arbitration
25 based on the amount of what's in – the amount that's in

1 dispute. And it's a model that's worth looking at and
2 I'm trying to get some more information to see if it
3 could be applicable to BAR.

4 The next big question is, does the BAR
5 disciplinary process provide – Well, I guess it's more
6 due process actually. And what I looked at was the
7 role of the ombudsman. They put an ombudsman in about
8 three or four years ago and I think it was a good first
9 effort, coming up with another venue to resolve
10 disputes between the State and members of industry. I
11 think it's a little bit ill-defined as it's defined as
12 the role is set up now, but it really has some
13 potential particularly for investigating and addressing
14 what I call rogue cops and these are the program
15 repairs that really are heavy-handed. I didn't see any
16 but I don't doubt that they do exist from time to time
17 as they do in every regulatory or police environment.
18 You always have to have a way to deal with these
19 individuals and I think the ombudsman would be a good
20 way to do that.

21 But the way it's structured I don't agree
22 with. I would like to see the ombudsman report
23 directly to the DCA director or the agency secretary as
24 opposed to the BAR, the director of BAR. I think that
25 would give the individual some more independence. And

1 also I think they need to have some more broader
2 authority to actually pull and look at cases and
3 interview BAR employees or members of industry. Right
4 now it's so ill-defined the person isn't sure what they
5 can do so I'd like to put some meat on those bones.

6 All right, finally the next big question, is
7 there a defensible definition of constructive fraud
8 that can be universally applied in auto repair cases?
9 And I think this is going to be a very difficult issue
10 in that the whole definition of fraud is based in
11 common law. It's been on the books for years. It's
12 been tested in the courts. It's really not going to
13 change and I'm not going to change it and nobody in
14 this room is going to change it.

15 However, I think there may be some ways to
16 make the whole concept of constructive fraud more
17 understandable to industry because it's a little bit
18 more different animal than statutory fraud, and what
19 I'm working on is a four-part test whereby you could
20 ask yourself four questions, and if you answer them all
21 yes, then you'll know that it's constructive fraud or
22 it is fraud. So it maybe will be something that will
23 be easier for program repairs as well as members of
24 industries to understand if a particular activity or
25 business practice is fraudulent or not, because in my

1 experience, in the field I think a lot of folks just
2 don't know, they just don't know whether it is or not,
3 so I'd like to make it easier for industry without
4 having to actually change the definition.

5 The next big question is, are regulators
6 enforcing documentation and paperwork standards that
7 don't exist? And on the face of it, it seems like a
8 stupid question. Why would they enforce something
9 that doesn't exist? But I actually did get a lot of
10 feedback from industry that there's a lot of mission
11 creep or scope creep that goes on out there where
12 they'll see what appears to be a minor paperwork
13 violation and maybe it's just a misunderstanding but
14 they'll write it up, so what I wanted to find out is,
15 does BAR take enforcement actions on violations that
16 don't exist in statute?

17 I certainly didn't see any cases of that and
18 I looked pretty broadly. I looked at a lot of NOV's and
19 cases and I didn't see any disciplinary action being
20 taken against violations that aren't rooted in statute
21 or the Code of Regulations.

22 However, I do think that ARDs, and this would
23 include Smog Check stations, a lot of them struggle
24 with the documentation standards just due to a lack of
25 education. Their systems just don't -- the systems that

1 they have in place to create work orders and estimates
2 don't lend themselves necessarily to complying with
3 regulations in certain cases. And in some cases just
4 lack of interest, you know, where the ARD just doesn't
5 really care. I mean, actually I saw - I really saw it
6 out in the field so my question, the question I'm
7 asking myself is, well, is there a way to kind of
8 change that dynamic, and I'm going to cover that in
9 another big question.

10 The next one is, is the system of sanctions
11 commensurate with the degree of violation? What I
12 found there based on a limited case audit was that
13 penalties are within the guidelines in every case and
14 generally seem reasonable given the level of
15 violations. And as a matter of fact, where I saw - the
16 cases where I saw the sanction, if it fell out of the
17 guidelines it would actually be less than the
18 guidelines. I actually saw a fair number of cases like
19 that where they sort of under-sentenced a licensee.
20 Suspensions or revocations in every case appear to be
21 reserved for serious offenses, fraud, repeat offenders,
22 clean pipers, folks like that.

23 Sanctions in only one case seemed excessive,
24 and this was, it's (inaudible) case. This was actually
25 a case that I got based on a random pull of cases and I

1 found this case and in this case I thought that the
2 sanctions were more than what was warranted, and
3 actually it would have been a great candidate for an
4 appeals board if one had existed two years ago when
5 this (inaudible) case was brought up.

6 The next big question –

7 CHAIR WEISSER: Sliding scale, you didn't
8 cover that.

9 MR. HOWE: Oh, I'm sorry. I know I'm limited
10 to the amount of time, so I'm trying to speed ahead a
11 little bit.

12 CHAIRMAN WEISSER: This is very interesting,
13 please continue.

14 MR. HOWE: Yeah, there is a sliding scale for
15 degrees in a number of violations. It starts off with
16 a stern lecture out in the field, then it goes to what
17 used to be called a Notice of Violation. Now they're
18 rolling out something else called an Advisory Notice
19 and it's going to be just a verbal reprimand. And then
20 from there it goes to an office conference, or in the
21 Smog Check area it could be a citation, probation,
22 suspension, full revocation. So there's – That's when
23 I mention there's a sliding scale, I think you have
24 every element along the way.

25 The one area that is missing, as I mentioned

1 earlier, might be arbitration, binding arbitration, but
2 that's really reserved for areas that don't involve a
3 violation of the Act, it's more workmanship, so I don't
4 know if it belongs on the sliding scale or not, there's
5 an argument either way. Does that answer your
6 question?

7 CHAIR WEISSER: Yep.

8 MR. HOWE: Okay. So if I had my glasses, I
9 could actually see your names. I'm sorry, is it
10 Meisser?

11 CHAIR WEISSER: DeCota.

12 MR. HOWE: DeCota, okay.

13 MEMBER DECOTA: I do have a question.

14 CHAIRMAN WEISSER: It's Weisser. Why don't
15 we wait until you --

16 MR. HOWE: Oh, I see. I've actually talked
17 to some of you, not that I can remember you. I didn't
18 bring my glasses. I didn't know I'd be this far away
19 from you.

20 Should BAR be in the business of setting and
21 enforcing trade standards? I think they're relevant
22 because they are cited as a violation in the Auto
23 Repair Act, although it's very rarely that they cite a
24 trade standard violation on it's own, usually it's
25 packaged with a number of other violations. And also

1 it's used as a baseline for documenting cars and
2 therefore as a basis for false and misleading
3 statements and fraud, and this way it becomes very
4 relevant because even though they still say, well,
5 look, we don't really go on trade standards, we get
6 them on fraud or misleading statements, but that's
7 based on documenting a car or undercover car and
8 sending it through and when you look at the
9 documentation on the undercover car, they mention that
10 they base the induced defect on trade standards, so it
11 loops around so the trade standards are relevant in
12 almost all these cases.

13 So then the question is what to do about it,
14 should they be in statute? I'm going to argue that
15 there should be statutory standards for diagnosis of
16 brakes and documenting estimates and repairs for brake
17 jobs. I think that would be very helpful. As to
18 whether they should all be in statute, I'm leaning
19 against it personally. I think it actually would
20 probably create more problems than it solves. But I
21 think by having this appeals board, particularly the
22 way that I'd like to have it set up, I think it would
23 actually help resolve a lot of these cases that are
24 based on trade standards without having to actually
25 write them in statute.

1 Let's see, I read the Auto Repair Inspection
2 Program Report and I agree with the recommendations
3 there. I know this probably doesn't apply to you folks
4 here, this is really more for auto body repair.

5 And there was also one thing in the – one
6 item in this scope of work that had to deal with code
7 of conduct or code of ethics, and I actually got a
8 couple of examples of written codes of ethics that
9 could apply in this industry and they look great. I
10 think they're fine. I don't know – Usually there are a
11 number of items as to an auto repair dealer will do
12 this or won't do that and not all of them can actually
13 be enforced or be written into statute. The ones that
14 can probably mostly are already in statute so I think a
15 lot of it is already in the Auto Repair Act. So I
16 actually don't know where to go with this yet. I think
17 the notion is nice, I just hesitate to recommend
18 something to a regulatory agency that they can't
19 actually put into regulations.

20 The next big question, is BAR doing enough to prevent
21 violations other than applying sanctions? And my
22 response to this is no, I don't think they are. I
23 would like to see BAR promulgate minimum proficiency
24 education and testing or implement minimum proficiency
25 education and testing that would be administered for

1 anyone who prepares an estimate, work order, invoice.
2 I would call them service writers. And they would have
3 to take a one-day class. It would include Write It
4 Right, how to identify and avoid fraud. That's where
5 they do this four-part test on constructive fraud so
6 they would know what it means. Systems and procedures
7 for preparing estimates, how to program your system so
8 the estimates are always documented correctly, make
9 sure they understand what BAR does and why they do it.
10 And that once they took this class they would actually
11 be licensed, the service writers would be licensed.

12 What I would also like to license in addition
13 to the service writers is one, at least one beneficial
14 owner of every business. The idea here is that it
15 would compel these folks to get just a minimal level of
16 education about the Auto Repair Act, elements of the
17 Health and Safety Code that they need to know to run
18 their business, and also we would like to have these
19 folks licensed so that if they violate the act and
20 there's a revocation, that it's not just this business
21 that's revoked, because the business could just be a
22 corporate entity or some shell entity, but we're also
23 going to revoke the licenses of the service writer and
24 one beneficial owner so that they're no longer in the
25 business. Because there's a fair amount of fronting

1 that goes on where businesses are revoked and the
2 people just go on to another business, open it up under
3 their brother-in-law's name or whatever, so I'd like to
4 address that.

5 There was some issue about should we license
6 actual technicians, and this is an idea that I think
7 its time may come at some point, but I don't think it's
8 really essential now. I'd like to maybe just take this
9 in baby steps and do the service writers, beneficial
10 owners, and then see how it goes.

11 Next step is right now I'm just kind of tying
12 up some loose ends, doing some additional legal
13 research into fraud issues and kind of putting some
14 meat around this idea of an appeals board, further
15 research on binding arbitration and then preparing a
16 draft report. I'd like to get it ready by the end of
17 August and then I'd like to continue auditing cases and
18 doing more field visits because I find both of those
19 really instructive for really understanding what these
20 programs are about and trying to address the concerns
21 of industry as well as of DCA and BAR. And then that
22 process will actually continue to go for another year.
23 And then it will be two more additional reports that
24 will be produced, one in June of 2006, one at the end
25 of 2006, that will be monitoring reports to look to see

1 how BAR is implementing the recommendations from the
2 initial report which will be finalized in December.

3 So I realize I probably went longer than my
4 20 minutes but --

5 [End presentation]

6 CHAIRMAN WEISSER: Well, Mr. Howe, it was, I
7 think, a very informative and interesting presentation.
8 And I want to on behalf of the Committee thank you, and
9 now open up to questions of you from the Committee
10 members if I could.

11 MR. HOWE: Okay.

12 CHAIRMAN WEISSER: And we'll start with Mr.
13 DeCota.

14 MEMBER DECOTA: Did you find in the sliding
15 scale that BAR followed a protocol for its actual
16 enforcement violations? I mean, was there like an
17 office visit, then a citation in each case, a citation
18 one, two and three and then maybe a DA or a prosecution
19 of that person, was that done in that order?

20 MR. HOWE: The cases that I looked at, yes,
21 however, I have heard allegations that there have been
22 some cases where it wasn't followed, where they went
23 directly from one citation to full revocation or
24 something like that, and that's been --

25 MEMBER DECOTA: Well, I know cases where

1 there was never even a citation issued.

2 MR. HOWE: Yeah, that could be. I mean I've
3 asked folks that whenever they hear this I say, fine,
4 give me the case because I'd love to audit it. And
5 I've only gotten two or three cases. In fact, I think
6 someone from -- maybe somebody from your organization
7 and that particular case was, I felt was okay. I would
8 love to see more cases and that's why I'm going to
9 continue to do this case audit. I know a lot of
10 industry representatives or people in industry will
11 say, well, I'd love to share my case information but if
12 I do I'm going to be subject to vindictive regulators
13 and they're going to target my business and this and
14 that, and I don't know what to do about that.

15 MEMBER DECOTA: I understand.

16 MR. HOWE: I mean, I need to have the
17 identifying information to get the case and they have
18 the cases. So I would love to audit more cases that
19 would show that particular situation. The ones that
20 I've seen I didn't see that, though.

21 MEMBER DECOTA: My other question is, were
22 there any cold calls made without BAR representatives
23 present on businesses that may have recently received
24 some type of violation or citation by your firm that
25 discussed the process?

1 MR. HOWE: Cold calls where I made a cold
2 call on a business?

3 MEMBER DECOTA: Where you didn't have a BAR
4 representative with you.

5 MR. HOWE: Oh, I see. Where I just would
6 visit a business?

7 MEMBER DECOTA: Right.

8 MR. HOWE: No, but we did invite business
9 folks in to these forums that we did around the state,
10 and in those forums the BAR folks, the BAR
11 representatives went not in the room so it was just us
12 and the members of industry. So, you know -

13 MEMBER DECOTA: Those invitations were sent
14 out by the chief of the Bureau of Automotive Repair,
15 not by you independently.

16 MR. HOWE: No, we asked industry
17 representatives to also send out invitations.

18 MEMBER DECOTA: Yeah, you called me three
19 days in advance of the meetings. The point being is
20 that, is there any independent analysis that you have
21 done without having the regulatory agency involved in
22 that discussion with the industry or have these mainly
23 been in conjunction with BAR or field representatives
24 or BAR management?

25 MR. HOWE: Well, the only time that a BAR

1 representative or any member of BAR has been with me is
2 when I do these field visits, and that is – and the
3 purpose of those field visits is to see how they
4 interact with members of industry. I mean, I could go
5 to any Smog Check shop. I could just pick one out of
6 the phone book I assume, but, you know, I don't think
7 that that would be productive.

8 MEMBER DECOTA: I think you have the ability,
9 Mr. Howe, to go to the Bureau and say, okay, in the
10 last 30 days how many violations have you issued, or
11 citations have you issued, and to whom were they issued
12 to, and then proceed with a follow-up call to those
13 individual licensees and ask them a series of questions
14 as to how they felt that it was handled.

15 MR. HOWE: Uh-hmm.

16 MEMBER DECOTA: I mean, I think that would
17 give you credibility to what's being done here and
18 allow you the input that you need to see how the
19 process was done.

20 MR. HOWE: Uh-hmm.

21 MEMBER DECOTA: Because I don't know it, you
22 know, but I know that I try to conduct myself on this
23 Committee in a way that my boss here would approve,
24 okay? And I'm sure that's the same when BAR personnel
25 and you are together, all right?

1 All I'm saying is that I think it is
2 essential in order to take and get to the meat of the
3 issues to make sure that a form of due process exists
4 in your evaluation of what's going on here.

5 MR. HOWE: No, I agree. In fact, that's a
6 good idea you've raised and I'm willing to do that
7 actually. I will do that.

8 CHAIRMAN WEISSER: I think that is a really
9 constructive suggestion on something like this.

10 Gideon?

11 MEMBER KRACOV: Thank you for being here
12 today, Mr. Howe. I just have, maybe if its okay, I
13 don't know what we are in time, but three or four
14 questions that I just wanted a little bit further
15 detail and explanation from you on, if that's okay.

16 MR. HOWE: Okay.

17 MEMBER KRACOV: The first was with regard to
18 the non-adopts. I'm wondering if you could give us a
19 little bit more of an understanding of if you saw
20 those, what your thoughts were, and some of the
21 research you've done in other contexts.

22 MR. HOWE: The non-adopts, for those that
23 aren't familiar with the term, that's where once a case
24 is decided by an administrative law judge, the ALJ will
25 write up a decision. That decision will go to the

1 director of DCA and in most cases they delegate it to a
2 member of their legal staff to review the decision and
3 maybe either to adopt it or they can actually change
4 the sanction. They don't even have to reject it, they
5 can just go ahead and change it. And that in most
6 cases becomes the final decision. Beyond that, the
7 appeal rights go to superior court. And they actually
8 do quite a few non-adopts.

9 In my case audit I specifically asked for
10 non-adopts to see which way they typically swing. Do
11 they swing in favor of the agency or do they swing in
12 the favor of the industry member? And I ended up
13 getting about five or six different non-adopts, and in
14 those cases one was sort of mixed where they reduced a
15 sanction here but then increased it there, and the
16 other cases, in every other case they increased the
17 sanction.

18 MEMBER KRACOV: Did you have any -- I mean I
19 know you haven't written your report yet, but were
20 there observations about that process and how fair you
21 thought it was? And I guess that kind of leads into my
22 second question which is in regard to the need for an
23 appeals board, that I guess is another step between
24 that and the superior court. What is the relationship
25 between your recommendation on that point and the non-

1 adopts, and did you have just any general observations
2 about the non-adopts that you'd like to share with the
3 Committee?

4 MR. HOWE: Well, the non-adopts that I saw,
5 even when they increased the sanction, it was always
6 within the guidelines and usually it would be from a
7 five-day suspension and they would bump it up to ten-
8 day suspension or something like that. It was always
9 within the guidelines and so there's not a lot you can
10 say about that. I mean, they complied with the letter
11 of their own law in that regard.

12 My concern about the non-adopts is that, as I
13 mentioned earlier, is that it sort of takes this notion
14 of an unbiased referee out of the process. And because
15 since your case is finally in the end really going to
16 be decided by this -

17 MEMBER KRACOV: The Bureau.

18 MR. HOWE: - the DCA director, and the
19 mission of the DCA is to protect consumers not
20 industry, that you could argue that, well okay, they're
21 biased in favor of the consumer. However, you have to
22 balance that with this principle, this legal principle,
23 that since their business license is not a right, it's
24 a privilege, they don't get full due process. So
25 there's really no clear-cut answer about how to handle

1 these cases. The ones that I saw, again, dealt within
2 guidelines. Most generally the sanctions seemed to be
3 consistent with the level of violation, with the one or
4 two exceptions, one of which I noted in my
5 presentation.

6 And so by looking at an appeals board what I
7 would like to do is to tackle a couple of problems.
8 One, deal with these few cases where perhaps for
9 whatever reason they read the case wrong, they were in
10 a bad mood that day. You know, personalities get
11 involved in these cases sometimes despite our best
12 efforts to be objective, where these sanctions don't
13 measure up to the violations, or where it's really a
14 lot of this comes down to a trade standard issue and it
15 becomes arguable as to whether they really followed
16 trade standards or not. I don't think there's a lot of
17 cases out there like that but I think there's enough
18 that I think it would merit looking at having an
19 appeals board.

20 And the model that I'm looking at is possibly
21 having a five-member board where we would have two
22 members from industry, two members from BAR, one public
23 member, staggered terms, where they would hear appeals
24 mostly based on what's in the case already, no new
25 evidence, no new testimony. Maybe just an industry rep

1 or their counsel could give a five-minute statement
2 perhaps, but I mean they have to get through these
3 appeals fairly quickly because they're going to get
4 quite a few. And they would actually make the final
5 call. And I think that - And it would have a limited
6 range of options. They could uphold the decision, they
7 could reject it entirely or remand it back to the
8 agency for further consideration.

9 MEMBER KRACOV: If I may, just a couple of
10 more follow-ups. You suggest it will be a tough sell.
11 Why do you make that observation?

12 MR. HOWE: Well, because it's a new agency
13 and I know that you have to look at the politics of,
14 you know, do we really need a new constitutional agency
15 in California or have the Legislature create this new
16 body. And granted it's not going to be much of an
17 agency, it's going to have five part-time board members
18 and a staff of six or seven or something like that.
19 And it would be funded by industry through their
20 license fees. I would like it to be an independent
21 appeals board so it wouldn't be part of DCA, it would
22 be an independent appeals board. But I just realized,
23 you know, that you get into the politics of these kind
24 of things where, you know, it is expansion of
25 government.

1 MEMBER KRACOV: I understand. Just the last
2 question, one of the issues that we hear about
3 periodically has to do with the staffing of the
4 prosecutorial branch, whether it's in the attorney
5 general's office, that there's not enough folks
6 dedicated to that aspect of it. Is that one of the
7 things that you're looking at as well?

8 MR. HOWE: It was not on my scope of work. I
9 sort of covered it tangentially by just looking at
10 backlogs, saying if they were understaffed you would
11 know it because they would not be either -- Either they
12 would not be accepting a lot of cases, they would be
13 artificially limiting their work load, or the cases
14 would just get backlogged, and I didn't see either case
15 or either situation, so that would lead me to believe
16 that staffing is not an issue.

17 MEMBER KRACOV: And you determined that by
18 looking at the referrals and looking at the timing?

19 MR. HOWE: Backlogs, yeah. How quickly are
20 they able to resolve the cases and generally -- I can't
21 remember the statistics but it was within the
22 guidelines that were set for the agency. I mean, they
23 generally got through them in a timely manner.

24 MEMBER KRACOV: Thank you.

25 MR. HOWE: Yeah.

1 CHAIRMAN WEISSER: You're finished with your
2 cross-examination, Gideon? I'm going to work my way
3 round. So, Mr. Pearman?

4 MR. PEARMAN: Okay.

5 CHAIRMAN WEISSER: Did you have a question?
6 (Telephone ringing)

7 MR. HOWE: That's like the intro to my
8 presentation.

9 CHAIRMAN WEISSER: We do this all the time.

10 MR. PEARMAN: You had mentioned -- I think you
11 said you had looked at among other things the Notice of
12 Violation records for some information, and you also
13 commented on the fact that that had been done away
14 with. Is part of your assignment to look at the effect
15 of the elimination of the NOV's on the effectiveness of
16 the enforcement process at all?

17 MR. HOWE: Yes, that actually was part of my
18 scope of work and they did away with the NOV's a couple
19 of years ago and I'm sure you are all aware of the
20 whole Trevor Law Group situation that caused a big
21 problem. I personally like NOV's because to me when you
22 find a minor violation you've got to document it
23 somehow, but you don't necessarily want to throw the
24 book at this business or licensee, if it's a doctor or
25 auto repair dealer, whoever it is, but they need to be

1 aware and be educated that this is not how you document
2 this particular transaction, you do it the other way,
3 so it's a good venue for doing that.

4 But I think they are going to do away with
5 the NOV's and just go with a verbal advisory notice and
6 not leave behind any paper. Now they are going to
7 maintain a record of these violations, but there's not
8 going to be any paper left behind, no public record
9 that can be subpoenaed by or sought after by some law
10 group, some lawyers on a fishing expedition.

11 CHAIRMAN WEISSER: Excuse me, there seems to
12 be a little contra - They are going to have a record of
13 it but there won't be a record of it?

14 MR. HOWE: Yeah, I guess it's not going to be
15 a public record.

16 MR. PEARMAN: It won't be a public record.

17 MR. HOWE: It won't be a public record.

18 CHAIRMAN WEISSER: Not available through
19 Public Right to Know?

20 MR. HOWE: No, no. And I guess it's because
21 they want to prevent unethical attorneys.

22 CHAIRMAN WEISSER: You bet.

23 COMMITTEE MEMBER: Unethical attorneys? I've
24 never heard of that concept before.

25 CHAIRMAN WEISSER: No, we of course have no

1 knowledge of that. I'd like to pursue this if you
2 don't mind?

3 MEMBER PEARMAN: Sure.

4 CHAIR WEISSER: That was -- I have a
5 regulatory background also and NOV's seem to be a truly
6 effective tool to have in your kitbag as a regulator.
7 And are you going to address directly in your report a
8 recommendation associated with perhaps a statutory
9 change that would allow the use of NOV's and constrain
10 the potential abuses of the NOVEMBER process, or are
11 you just going to be silent on that, Mr. Howe?

12 MR. HOWE: Well, I am going to talk about it
13 and it's going to be in conjunction with a
14 recommendation that BAR is going to put out. And I
15 don't know how public this recommendation is right now
16 so I really can't go into it.

17 CHAIRMAN WEISSER: Okay.

18 MR. HOWE: In fact, I haven't even seen it.
19 I've just had it explained to me so I really know where
20 it's going. It's going to be in conjunction with that
21 so I'm going to have a recommendation, I just don't
22 know what it's going to be yet.

23 But I mean I'm like you, I like the NOV's as
24 well. It's just they did a survey of industry to see
25 what they would like to do in the way of notices of

1 violation or advisory notices or whatever you want to
2 call them – I mean they're really the same thing – and
3 they are working on or I think they've got some
4 arrangement that everybody's happy with. And I've
5 reviewed it. I'm okay with it.

6 CHAIRMAN WEISSER: Thank you. Did you have
7 anything further, Robert?

8 MR. PEARMAN: I've heard before this question
9 bounced about the vagary of the fraud definition, but
10 maybe as a lawyer I don't understand why there's some
11 lack of understanding about it. Can you just elaborate
12 on what the concern is, whether in the view of the
13 industry is somehow that fraud is too undefined and
14 causes –

15 MR. HOWE: You know, I didn't hear the first
16 part.

17 MR. PEARMAN: About fraud, you had said that
18 finding a definition of fraud. It seems to me that
19 that's not that hard to understand in this concept.
20 But can you elaborate on what the concern is or the
21 fear that's happened with this allegedly indefinite
22 definition of fraud in terms of either haphazard
23 enforcement or unfair enforcement?

24 MR. HOWE: Well, a lot of it has to do with
25 this issue of constructive fraud which is kind of a

1 subset of fraud where you don't need the element of
2 intent, and I think that's where the rub is, that where
3 there's a business practice where they didn't intend to
4 defraud anybody but in fact they did according to the
5 law. And a lot of people in industry would like the
6 law to be, at least as it applies to auto repair
7 dealers, to be limited to just fraudulent practices
8 where intent is involved. And I'm just afraid that
9 that's just not going to happen because constructive
10 fraud is a legal principle, it's been around forever,
11 it's on the books of the State of California. I mean,
12 it's going to apply to the industry whether they like
13 it or not and there's nothing I can do about it.

14 But I would like to figure out a way to make
15 the whole idea more understandable to the industry so
16 that members of industry that are sanctioned for fraud
17 are the ones that are intending to defraud, and that
18 the ones that just clearly it is an honest mistake
19 don't have any problems with it, and I see that as a
20 factor of educating them. That's why I really like
21 this idea of having a one-day class for service writers
22 so they really understand what it is, what constructive
23 fraud is and that even if it doesn't involve intent it
24 still is a fraudulent business practice. It's very
25 difficult to understand.

1 CHAIR WEISSER: Thank you, Mr. Howe.

2 Proceed down, and Jeffrey and then John and
3 then I'll finish up.

4 MR. HOWE: Okay.

5 MEMBER WILLIAMS: I'm wondering if you've
6 ever encountered anything that we might call sort of
7 tough plea bargaining situations. In another context,
8 we'll put you up for first degree murder and you'll
9 likely be executed or you can plead guilty to
10 manslaughter or something like that. So there's this
11 squeeze, we'll add to the number of violations or
12 something? That's often a pretty tough prosecutorial
13 practice.

14 MR. HOWE: Yeah, I really did not. And when
15 looking at cases I would look at the investigative
16 report and the accusation and the decision to see, you
17 know, did what they originally found, did that flow
18 through to the decision, and in most cases, it does. I
19 don't remember seeing any case where it didn't.

20 What does happen is that I think, allegedly,
21 that there is strong-arming that goes on out there
22 where they'll say - and this usually is in the context
23 of a workmanship issue - where they'll say, *Look, we*
24 *don't know whose fault it was, give them back their 50*
25 *bucks for whatever they spent money on or otherwise*

1 *we're going to run cars through here and get you on*
2 *something.* You know, there are allegations of that. I
3 would love to actually see the case. I mean again,
4 that's what I would like to see in my case audit. I
5 actually haven't had any specific cases referred to me,
6 so I can't prove whether it happens or not, you know,
7 unless I'm actually there when it happens. But I have
8 had a couple of cases referred to me and I looked at it
9 and I thought, there's nothing wrong with this.

10 CHAIRMAN WEISSER: Thank you. Now for the
11 ever-patient John.

12 MEMBER HISSERICH: Just two quick questions
13 or observations. One is to the issue of right versus
14 privilege. My impression was that the initial granting
15 of a license was typically viewed as a privilege, but
16 that once it was actually possessed by someone there
17 were someone rights associated with then the effort to
18 take it away. So maybe the -- I guess it's a property
19 right or possession interest in owning the license and
20 maybe it does have a higher standard before one can
21 take it away, I mean just as you look at that issue.

22 MR. HOWE: Yeah, it does. I don't know if
23 you recall from my presentation there was a question
24 mark after that.

25 MEMBER HISSERICH: Right.

1 MR. HOWE: In other words, is it a right or
2 is it a privilege because there is – you could debate
3 whether once you're making a living off it and you've
4 invested in assets and opened a business and got all
5 this good will and everything and all of a sudden they
6 want to take it all away. You know, it's –

7 MEMBER HISSERICH: And so there are
8 presumably some higher standard of due process in that
9 – in the doing of that?

10 MR. HOWE: Exactly.

11 MEMBER HISSERICH: I just make that as an
12 observation because I know in some other parts of my
13 life where we've dealt with things like that, that
14 higher standard tended to apply to that that they
15 already had.

16 Second point, the service writers, and my
17 impression of that is that there is a high turnover
18 amongst service writers and that they may be – at least
19 in the big agencies or the big car dealerships – that
20 they may be under a considerable amount of pressure
21 both economic and customer satisfaction. Would you see
22 – Are they going to be in your view, I know this is not
23 set yet, licensed? Would they carry a ticket with them
24 that they could take from agency to agency or would
25 their role as a service writer attach to the particular

1 spot where they've gone through the training with at
2 least one of the owners of that agency or firm?

3 MR. HOWE: In my model, the service writer
4 would have a license that applied to him.

5 MEMBER HISSERICH: Where employed, wherever?

6 MR. HOWE: Exactly. So and actually it would
7 end up being effectively a condition of employment
8 because you would not be able to fill out an estimate,
9 work order or invoice unless you put your number on
10 that document. So if you don't have the number, it's
11 not a legal estimate or an invoice and, you know, it's
12 not a legal transaction. And it would apply to that
13 individual so if they left that place of employment and
14 went someplace else the number would follow them. And
15 if they screwed up and did a lot of bad things, then
16 they would pull that license.

17 MEMBER HISSERICH: Thank you, and presumably
18 the owner of the place that they went to would also
19 have to have had the necessary training so that they
20 can't -

21 MR. HOWE: Yeah, I'd like to have one
22 beneficial owner.

23 MEMBER HISSERICH: Which may be hard to
24 determine in some of those big dealerships.

25 MR. HOWE: I know, it is. I mean, you know,

1 just pick one to actually – and essentially what
2 they're doing is guaranteeing the business license.
3 And I actually saw this. If I could just have a couple
4 of minutes, I saw – The one administrative hearing I
5 went to was very interesting because it was an absentee
6 owner of a chain of body shops, body repair shops, and
7 the owner didn't even show up to the hearing. It was
8 his attorney that was there and his attorney managed to
9 very craftily separate the owner from the accusation.
10 And then they stipulated to an agreement to sanction
11 the business. And then the attorney general
12 representative said, *Okay, what about Mr. So and So?*
13 And the attorney said, *Hey, wait a minute. He's not*
14 *part of this anymore. It's just the business, it's not*
15 *him.* That guy's probably applying for another state
16 license right now. I want to avoid that kind of thing.

17 CHAIRMAN WEISSER: Thank you. It seems like
18 – Are you done, John?

19 MEMBER HISSERICH: Yeah.

20 CHAIRMAN WEISSER: Okay. A couple of
21 questions and then we're going to open up to the
22 audience for a minute. It seems like an awful lot of
23 the analysis you're doing involves, you know, issues of
24 law and of administrative law and the structure of the
25 administration of that law. And what kind of legal

1 assets have you been able to bring to bear in your
2 firm, which is a management consulting firm as I see
3 from the blurb?

4 MR. HOWE: Yes. I have to tell you right off
5 the bat that I'm not an attorney. My wife is a
6 consumer protection attorney as it happens.

7 CHAIRMAN WEISSER: My sympathies, sir.

8 MR. HOWE: Yes, nobody messes with us. But
9 yeah, I mean I obviously talk to her about these
10 matters. But I mean, I've dealt with these kinds of
11 projects for so many years and I know how to research
12 legal principles and find cases and analyze cases, and
13 I probably should be an attorney. But I also have a
14 little brain trust of attorneys that I talk to about
15 this project, defense as well as -

16 CHAIRMAN WEISSER: So no one on staff, but
17 you have access to attorneys?

18 MR. HOWE: Yeah.

19 CHAIRMAN WEISSER: You're able to at cocktail
20 parties or when you're fishing or going to ball games
21 or whatever, chat with them about it?

22 MR. HOWE: Or I just call them on the phone,
23 yeah. People that work for the Attorney General,
24 couple of academics that deal with this issue.

25 CHAIRMAN WEISSER: The DAs.

1 MR. HOWE: Yeah, but you have to understand
2 that these people all have a bias.

3 CHAIRMAN WEISSER: Well, that's my second
4 question. I noticed on your first slide and then in
5 the discussion to a question that I think Gideon put
6 forward that you said the mission of DCA, the
7 Department of Consumer Affairs, is biased toward
8 consumers.

9 MR. HOWE: Uh-hmm, that's correct.

10 CHAIRMAN WEISSER: What do you mean, biased
11 toward consumers?

12 MR. HOWE: Well, I don't have their mission
13 statement with me right now.

14 CHAIRMAN WEISSER: We do.

15 MR. HOWE: If you just read it, I mean do you
16 know what it is?

17 CHAIRMAN WEISSER: Yeah. So you mean it's
18 biased toward consumers against the interest of the
19 industry folks?

20 MR. HOWE: Well, I can't speak for the actual
21 people, the warm bodies at DCA, as to what kind of bias
22 they have one way or the other, but if you look at the
23 mission statement, you would --

24 CHAIRMAN WEISSER: So that mission statement
25 you think influences what DCA does?

1 MR. HOWE: Well, again, I don't know if it
2 does or not. Influence is a personal thing, you know,
3 it depends on the actual individuals and I don't know
4 how they would be biased or influenced one way or the
5 other, but I just know if you look at the mission of
6 the agency, it does say -

7 CHAIRMAN WEISSER: The mission of the agency
8 you're indicating is biased toward consumer protection?

9 MR. HOWE: Consumer protection, yes.

10 CHAIRMAN WEISSER: And that would be making
11 consumer protection a higher priority than, let's say,
12 air quality?

13 MR. HOWE: Well, I don't know about air
14 quality, but as far as the right of a business, yes. I
15 mean that's their role and that should be their role.
16 Business has all kinds of advocates out there.

17 CHAIRMAN WEISSER: The mission of the agency
18 is biased, you say, toward consumer protection. Is it
19 biased toward air quality?

20 MR. HOWE: I can't speak to that, I don't
21 know.

22 CHAIRMAN WEISSER: Is there something in the
23 mission related to air quality?

24 MR. HOWE: I don't recall if there is or not.

25 CHAIRMAN WEISSER: I have the mission here,

1 would you like to read it?

2 MR. HOWE: Of DCA?

3 CHAIRMAN WEISSER: There's nothing in here
4 that says air quality.

5 MR. HOWE: Okay, then the answer's no.

6 CHAIRMAN WEISSER: Thank you.

7 MR. HOWE: I don't know if there's a point I
8 was supposed to -

9 CHAIRMAN WEISSER: No, the point is one of
10 the issues we've been wrestling with is whether or not
11 you're liable to get an air quality - a higher
12 investment in reducing air quality, a higher degree of
13 commitment if this program, the policy for this program
14 were here in Department of Consumer Affairs or the Air
15 Resources Board. We've had this conversation. The
16 Legislature picked up on it. There's a bill, and we'll
17 talk about that in a while, to do that and it's been an
18 interesting question. And I'll leave it at that. I
19 wasn't trying to -

20 MR. HOWE: I understand your course there,
21 what you're talking about. And actually, I remember
22 that question did come up a couple of times in
23 interviews, and it wasn't in my scope so I didn't
24 research it.

25 CHAIRMAN WEISSER: You're a fortunate man.

1 MR. HOWE: Yeah, it was an intriguing
2 question. You know, maybe that's -

3 CHAIRMAN WEISSER: I have to assume that you
4 - because of the statement in your report and your
5 response to Gideon - that you actually think that what
6 the Department's mission statement says has some impact
7 on its priorities.

8 MR. HOWE: Well, one would hope so. I mean,
9 that's why we write mission statements, right?

10 CHAIRMAN WEISSER: Right. We're going to
11 open up to questions and then we're going to take a
12 brief break. And we're going to go late before we
13 break for lunch if that's okay with folks. So we'll
14 start from the back this time and work forward,
15 Charlie. Mr. Ward?

16 MR. WARD: I'm not sure how to do this.

17 MR. HOWE: Are these questions for you or
18 questions for me?

19 CHAIRMAN WEISSER: Beats me. Hang around.

20 MR. WARD: Yes, I guess a couple of thoughts.

21 Randall Ward, I represent the California Emissions
22 Testing Industries Association, the Test Only
23 Association. Unfortunately our association unlike Mr.
24 DeCota's was not invited to any of the forums so we did
25 not have an opportunity to try to coalesce, but

1 subsequent to that time I have talked to Mr. Howe on a
2 couple of occasions and I suspect that we'll continue
3 those conversations as he proceeds.

4 One of the questions that I'd have, or I
5 think the Committee would have and I thought it was
6 getting there, was how many attorneys have been
7 conversed with by Mr. Howe that are actively
8 representing clients that are impacted by BAR
9 processes. And there's probably a handful that have
10 substantial experience and while clearly they may be
11 biased, they'd also be able to present I think a fairly
12 definitive view of how the law is applied,
13 interpretations of fraud, etcetera, etcetera. So I
14 think that might be enlightening, and if it hasn't been
15 done I would certainly recommend it. And I would be
16 happy to give him some names, I'm certain that Mr.
17 DeCota has names of attorneys that have a lot of
18 experience.

19 One of the issues about fraud, which is this
20 ominous term, and I clearly recognize that you've got
21 legal definitions in how those issues, the issue of
22 fraud is applied, but I think it would best serve in
23 the context of my making a comment here with an example
24 that we can all understand.

25 The task analyzer is literally hooked up to a

1 computer that then tabulates the information and runs
2 the test and all those kinds of things. If you do
3 anything that is incorrect, that can be construed to
4 have been inputted, inputted or not inputted on that
5 computer, that's felony computer fraud. Whether the
6 Bureau wants to charge you with felony computer fraud
7 or not is another story. They have in some cases done
8 that, okay, and that is subjective.

9 And of course, my big issue here – and I'm
10 not sure the appeals board process resolves it, I'm not
11 sure that it doesn't – is there is no consistency in my
12 mind based on the cases that I'm aware of, that with
13 the enforcement division that give you an ability to
14 say that a certain type of action is going to be
15 enforced one way by one program rep versus another, by
16 one field office versus another. It's not predictable
17 and that leads the industry to have an overall feeling
18 that it is subjective, not objective.

19 Now, I would also say that you're – Now, I
20 didn't hear this so I'm not going to say that it hasn't
21 happened, is that Mr. Howe might want to look at cases
22 that did not go necessarily to a settlement conference.
23 Those are particularly important.

24 CHAIRMAN WEISSER: Thank you, Mr. Ward.

25 MR. WARD: Thank you.

1 CHAIRMAN WEISSER: Can we get the beeper to
2 go on or the electric shock, one of the two? Okay.
3 Chris and then Charlie.

4 MR. ERVINE: Chris Ervine, Coalition of State
5 Test and Repair Stations. I had a question. At the
6 industry meetings that you had, how many industry
7 representatives did you interview, do you know?

8 MR. HOWE: Across the four meetings, probably
9 about thirty or forty.

10 CHAIRMAN WEISSER: So just for the record,
11 for our transcriber and for folks listening via the web
12 who wouldn't be able to hear you Mr. Howe, you said 30
13 or 40. If you could walk up and just --

14 MR. HOWE: Sorry. We had four forums and I
15 don't have the exact numbers but I'm guessing probably
16 30 or 40 individuals.

17 CHAIRMAN WEISSER: Right, thank you. Why
18 don't you just stay standing in case Chris has
19 something further.

20 Chris, please continue.

21 MR. ERVINE: I attended the one here in
22 Sacramento. There were five industry people there.
23 Test-only was there, we had General Auto Repair. We
24 had Smog Shop there. So pretty much the whole industry
25 was represented.

1 CHAIRMAN WEISSER: With five people?

2 MR. ERVINE: Well, yeah. That's what my
3 concern is, the way they solicited this. The lady that
4 ran the forum said that they sent out I believe it was
5 20 or 24 invitations, and I'm sorry that industry
6 didn't take advantage of this and do a much better
7 showing, but I think that they, you know, when you're
8 talking about 30,000-plus businesses in the State of
9 California to base everything on just 40, I think
10 that's a little bit -- needs to be a much larger
11 sampling.

12 CHAIRMAN WEISSER: Thank you, Chris.

13 MR. ERVINE: The other thing that I had was I
14 would really like to see false and misleading
15 statements and fraud better defined. And it may not be
16 in your scope of things, but I would like to see how it
17 is defined with the Smog Check station and the way it
18 was presented to industry by BAR.

19 CHAIR WEISSER: Thanks, Chris. Mr. Peters.

20 MR. PETERS: Yes, hello, Mr. Chairman and
21 Committee. My name is Charlie Peters, Clean Air
22 Performance Professionals. We're a coalition of
23 motorists. A couple of things that came up that I
24 found pretty interesting and I wish to see if I can
25 learn a little more.

1 One item was the issue brought of the
2 ombudsman position within the Department of Consumer
3 Affairs, the desire for that person to either report to
4 the director or to the secretary. I believe a little
5 further research might show that the ombudsman in fact
6 reports to the director and informs the Bureau of
7 Automotive Repair, so his goal there may already be
8 accomplished with a little further investigation.

9 Item two, he brought up the issue that there
10 seemed to be cases that he had reviewed that a
11 comprehensive process was followed before any
12 revocation kinds of things would generate, and I would
13 hopefully be able to supply with him at least one case
14 that I find very interesting that I don't see evidence
15 that in fact is correct and I have another one that
16 might very well fit that case if that person would like
17 to be involved.

18 So and then the third item that I find very
19 interesting. We talk about the specific accusation and
20 whether that follows through to the end and so on, but
21 another little part of that that wasn't asked or wasn't
22 looked at necessarily is, is there any automotive
23 repair facility in the State of California that follows
24 every requirement for licensure all the time, and I
25 think the answer to that is no. So that can be several

1 different items, even items that are not necessarily
2 valid can be part of the accusation and we end up with
3 the one that's right, we get the business to work very
4 hard with his attorney to try to defend his position
5 and don't necessarily work on improving the behavior
6 and the outcome of the process, so I would petition for
7 the possibility of looking at the comprehensive
8 possibilities of looking at things where you come in
9 and accuse somebody of not writing down the mileage
10 which in fact may be just an oversight and that becomes
11 a significant issue when the issue was that the
12 brother-in-law of the Bureau representative felt abused
13 in that station's brother's place down the street, you
14 know. So the comprehensive appropriate policy could be
15 possibly expanded. Thank you.

16 CHAIR WEISSER: Thank you, Mr. Peters.

17 And thank you, Mr. Howe. I really appreciate
18 the time that you've taken to talk with us. I know it
19 went longer than you expected and we expected, but
20 that's because you've done a lot of work on subjects
21 that are really interesting to us and subjects that in
22 some cases we'll be following up on.

23 MR. HOWE: Could I just make a closing
24 remark?

25 CHAIR WEISSER: Yes, please.

1 MR. HOWE: Okay. I just want to, first of
2 all, thank you for inviting me to your Committee and
3 there was a lot of good questions and appreciate the
4 chance to share my findings, and good questions from
5 the audience as well. I think in the future if you
6 want to have briefings further down the road, by all
7 means just give me a call. I know the last time we
8 tried to do this my schedule didn't work out, I usually
9 have two or three projects going at one time so it can
10 be difficult, but if you want to have a future
11 briefing, just give me a ring, perhaps maybe later in
12 the fall when the findings are getting more solidified.

13 CHAIR WEISSER: That might be a desirable
14 thing, Rocky. We have to do it, of course, in public,
15 and so we're limited in terms of our time, but we, I
16 think, would like to have a follow-up for an update as
17 you draw close to the submission of your final first
18 report.

19 MR. HOWE: And also, Mr. DeCota, I am going
20 to follow up on your suggestion -

21 MEMBER DECOTA: Thank you.

22 MR. HOWE: - about looking at contacting some
23 licensees that have had recent disciplinary experience.
24 It was a good idea so I'll follow up with that.

25 CHAIR WEISSER: And I think Mr. Ward had a

1 similarly good suggestion along the same lines.

2 MR. HOWE: Yeah, absolutely.

3 CHAIR WEISSER: Okay.

4 MR. HOWE: Okay. Thank you, folks.

5 CHAIR WEISSER: Thank you. And folks, what

6 I'd like to propose -- oh, I'm sorry, Gideon?

7 MEMBER KRACOV: I just had one thing, Mr.

8 Chairman, and maybe this is directed towards Rocky. I

9 think this whole topic is something that Mr. Hotchkiss

10 would be, his input would be very valuable on.

11 CHAIR WEISSER: Yeah.

12 MEMBER KRACOV: If there's a way that we can

13 get this PowerPoint to him and maybe he'd have some

14 input for Mr. Howe at a future perhaps at a further

15 meeting.

16 CHAIR WEISSER: Well stated, Gideon. See if

17 you can get that done, Rocky.

18 MS. BAKER: I mailed it in a package last

19 night.

20 CHAIR WEISSER: Oh, okay, so we are getting

21 it. Very good. Rocky?

22 MR. CARLISLE: I just had one comment before

23 we take a break.

24 CHAIR WEISSER: Yes.

25 MR. CARLISLE: If we could change BAR and the

1 ARB update, the order that sequence so ARB goes first.

2 Ms. Morrow has another obligation right after lunch,

3 CHAIR WEISSER: Oh. Okay. Are you okay with

4 that, Wayne?

5 MR. RAMOS: Yes, that's fine.

6 CHAIR WEISSER: Okay. My thought is to take

7 a 10, maybe 15-minute break now and then go until

8 around 12:30 to miss the initial portion of the lunch

9 rush, and then take, you know, 45 minutes or an hour

10 for lunch and then come back, is that okay? So we're

11 going to adjourn for 15 minutes, folks. Thank you.

12 (Off the record)

13 Okay. If I could ask folks to take their

14 seats the meeting will come back into order. And

15 Sylvia is not in the room.

16 MR. CARLISLE: We've got a rescue party going

17 out.

18 CHAIR WEISSER: Okay. While we're waiting

19 for Sylvia, as I mentioned at our last meeting, I will

20 miss the September meeting, so we need to identify who

21 will be chairing that meeting in my absence. My

22 suggestion is always find somebody who's not at this

23 meeting, and for that reason I would suggest to you, if

24 it's okay with the Committee, that we ask Jude to act

25 as chair. Is that okay with folks?

1 COMMITTEE MEMBER: Fine.

2 CHAIR WEISSER: Okay. So we'll see. If she
3 fails, we'll get someone else who's not here. The date
4 of that meeting is the?

5 MR. CARLISLE: I believe it's the 27th of
6 September.

7 CHAIR WEISSER: The 27th, okay.

8 MALE VOICE: Al Haig is available.

9 CHAIR WEISSER: Al Haig. I'm in charge here.

10 - o0o -

11 Okay. Now we'll ask the Air Resources Board
12 in the person of the inestimable Sylvia Morrow to come
13 forward and give us a presentation on what's happening
14 and shaking at CARB.

15 MS. MORROW: Okay. Hello, this is Sylvia
16 Morrow with the California Air Resources Board. I'm
17 just going to provide you a quick update on a few
18 items.

19 First of all, as I mentioned in the past, you
20 know we were in the process of awarding a Smog Check
21 evaluation contract, and that finally went through the
22 entire process and so it is now official, we have
23 awarded the Smog Check evaluation contract to Sierra
24 Research and we have had our first initial start-up
25 meeting.

1 As far as the topic that you guys would be
2 interested in, you know, task one, looking at the Smog
3 Check Program, we're going to be having a special
4 meeting in a few weeks as soon as Tom Cackette gets
5 back from vacation so that he can let the contractor
6 know exactly what his thoughts are on that issue.

7 Also, ARB's Eligible Monte laboratory
8 recently completed testing of 23 vehicles that failed
9 the BAR low pressure evap test. You know, as we
10 discussed in previous meetings, we had some issues with
11 the error of commission rate for the low pressure evap
12 test, so we have some preliminary data. Out of those
13 23 vehicles that failed the BAR low pressure evap test,
14 all of them had identifiable low pressure evaporative
15 problems, so that's a good sign. The ARB lab is going
16 to continue doing some additional testing, and then
17 we'll also be doing some shed testing, and what that
18 basically is is they'll test the vehicle that has
19 failed, do the repairs and see what the emission
20 benefits of those repairs are.

21 Also, I don't know if you were aware of it,
22 last week ARB held workshops for the Carl Moyer
23 guidelines, and one of the new things with the Carl
24 Moyer program this year is they will be including
25 proposed criteria for light duty vehicle retirement

1 programs. And just to let the Committee know, that is
2 a different program than BAR's scrappage program. For
3 the light duty vehicle retirement program via Carl
4 Moyer funds, it cannot be a car that has failed the
5 Smog Check Program; it is a passing car and it's to get
6 them off the street quicker.

7 Also, this might be of interest to you.
8 We're in the process, and they've been telling me, oh,
9 it's coming out soon, it's coming out soon, so just to
10 let you know that an internal draft of the RSD report
11 will be at least hitting ARB and their respective
12 agencies fairly shortly, and that means that a final
13 report will be out shortly. And what that actually is
14 is ARB and BAR hired a contractor to take a look at RSD
15 and see what its potential is in being incorporated in
16 the Smog Check Inspection Program. And so I don't
17 really have any data yet as far as what the initial
18 results are, but I'm sure that you will be advised when
19 we find out.

20 And that's about it.

21 CHAIR WEISSER: Couple of questions, Sylvia.

22 MS. MORROW: Okay.

23 CHAIR WEISSER: On the evaporative testing,
24 what's the time line for the completion of that
25 analysis, that study, and is there a timeframe for when

1 a report will be available or a presentation could be
2 made to this Committee?

3 MS. MORROW: Well, those are preliminary data
4 and I'm not aware if BAR has actually seen the data
5 either. We have a standard BAR/ARB management meeting
6 that is coming up in the beginning of September, and I
7 think at that time we will discuss how the information
8 is going to be released and what kind of form it is in.

9 CHAIR WEISSER: Rocky, I'd like to have that
10 on the agenda for the October meeting, a report from
11 both agencies as to where we stand on that.

12 And could you also give us an indication as
13 to the timing on the RSD, the remote sensing analysis,
14 when a report might be available?

15 MS. MORROW: You know, like I had stated
16 earlier, you know, the report, at least to staff level
17 it was conveyed that we would be receiving a draft -

18 CHAIR WEISSER: Shortly.

19 MS. MORROW: - shortly, any day, and it's
20 been any day for about a week and a half, so.

21 CHAIR WEISSER: Well, now you have a bit of
22 experience with that.

23 MS. MORROW: Yeah, so I can't say, you know,
24 how long it would take the contractor to finalize the
25 report. I'm not in the working, you know, with the

1 contractor on that so I couldn't tell you off the top
2 of my head, I couldn't give you a good date.

3 CHAIR WEISSER: Rocky, I wonder if you
4 couldn't also schedule for October a presentation by
5 ARB and BAR on the remote sensing report.

6 And is there anything you'd like to share
7 associated with the South Coast Air Quality Management
8 District's remote sensing proposal?

9 MS. MORROW: Yes. Actually, the Air
10 Resources Board has been working closely with both BAR
11 and South Coast in putting together their pilot study.
12 We have included specific criteria in the Carl Moyer
13 guideline specific to the South Coast for their
14 project. So yes, we are working with them on that.

15 CHAIR WEISSER: And do you want to give the
16 group a little capsule summary, or do you want me to
17 take over?

18 MS. MORROW: No, I can. Basically what it is
19 is that there are many voluntary vehicle retirement
20 programs out there, and what South Coast wants to do is
21 they want to make sure that the cars are actually
22 driven on the road, and so they're developing their
23 pilot program using RSD to identify the high emitters
24 and then I believe it's then offering them money for
25 scrappage and I believe but I'm not sure about also

1 offering money for repair.

2 CHAIR WEISSER: Yes.

3 MS. MORROW: So that when these cars are

4 either repaired or taken off the road that there's

5 actual tonnage reductions. In other programs

6 throughout the state with voluntary vehicle retirement,

7 a person with an X-year-old car is just sent a letter,

8 so it's not known whether that car is actually being

9 driven on the road or not.

10 CHAIR WEISSER: So this would actually find

11 cars on road, in use, that are high emitters if not

12 gross polluting vehicles.

13 MS. MORROW: Exactly.

14 CHAIR WEISSER: And then offer the owner

15 voluntarily the opportunity to scrap the car or to get

16 it repaired.

17 MS. MORROW: Yeah. As long as they don't

18 fall within the window of being a person that belongs

19 to the BAR scrap program.

20 CHAIR WEISSER: Right. Okay, we have a

21 couple questions, we'll start with Tyrone.

22 MEMBER BUCKLEY: I was wondering, you

23 mentioned that Sierra Research had been awarded the

24 contract to work on the Smog Check evaluation research.

25 MS. MORROW: Yes.

1 MEMBER BUCKLEY: I was wondering if you could
2 remind us of the scope of that research again. And
3 also I think you mentioned a time when a scope of work
4 discussion is going to begin with Sierra Research. Can
5 you reiterate that?

6 MS. MORROW: Yes. We're going to be talking
7 on the first task, which is the Smog Check evaluation
8 service where Tom envisions that we take a look at -

9 CHAIR WEISSER: That's Tom Cackette.

10 MS. MORROW: Yeah, Tom Cackette, take a look
11 at what are the problems with the Smog Check Program
12 and looking also at why are 40 percent of the cars that
13 had failed and been repaired in the past failing within
14 about six months of having a Smog Check. You know, he
15 thinks that's a critical piece to evaluating the
16 program, and so what we're planning on doing is
17 discussing that task with the contractor. They would
18 be developing a scope of work of how to analyze this
19 problem. We would be allowing the IMRC to comment on
20 their proposal to analyze the problem, and then we
21 probably would get, from my understanding, we would
22 probably get a second contractor that actually would do
23 whatever the testing that is needed, if there is
24 testing needed or whatever the evaluation is.

25 And then the rest of the contract is looking

1 at various, it's like a laundry list of different types
2 of tasks, looking at issues with OBD, looking at issues
3 with station performance, looking at consumer issues,
4 just a long list.

5 And also a third part of that contract is
6 called ad hoc assignments. Many times BAR receives
7 requests or needs something to be done where they don't
8 have the staff expertise in the programming field, and
9 so then the contractor is asked to do it on a quick
10 turnaround time.

11 CHAIR WEISSER: One aspect - I'm sorry,
12 Tyrone, please continue.

13 MEMBER BUCKLEY: No, I was going to ask her
14 to address my second question, but you can continue on
15 that.

16 CHAIR WEISSER: No, please.

17 MEMBER BUCKLEY: And when do you think that
18 would come before us, the review of the -

19 MS. MORROW: You know, writing up a test
20 plan, they indicated in our preliminary meeting that
21 that would take about two months, so I would anticipate
22 that the end of the year would be a sound guess.

23 CHAIR WEISSER: One aspect of trying to
24 figure out program effectiveness that's been tossed
25 around and I'd like to toss it again into the basket

1 for your consideration is the notion of testing a bunch
2 of cars, let's say in Klamath or, you know, a place
3 where you don't have Smog Check, and then comparing
4 those to a bunch of cars in L.A. or the Bay Area where
5 you have an enhanced program and seeing what the
6 differences in the fleets are like. I mean, it's not
7 complicated, it's simple. You don't even have to bring
8 the cars in, you could use remote sensing because
9 you'll get a high enough number of reads to compensate
10 for any less accuracy that you might get, and it might
11 give out some very interesting data as to the actual
12 efficacy of the Smog Check Program of reducing
13 emissions of onroad vehicles.

14 MS. MORROW: Well, I think that would be a
15 good comment to make when we're proposing the test
16 plan.

17 CHAIR WEISSER: I'm giving you a heads up.

18 Okay, are there other questions? John?

19 MEMBER HISSERICH: I just want to get a
20 little clarification of this retirement program that
21 you talk about, and maybe it's not that fully worked
22 out, but potentially letters would be sent to
23 individuals that have a car that's known to be a high
24 emitter, regardless of whether we know that in fact
25 it's emitting or not because it's not been tested, or

1 what? I'm just trying to understand that.

2 MS. MORROW: There's a window of time where a
3 vehicle retirement would be credited to the regular
4 Smog Check Program. And also, any vehicle that fails a
5 Smog Check inspection is credited to BAR's program.

6 Now, the way the Vehicle Retirement Program
7 works is, let's say for the Bay Area, for example, they
8 send a letter on the odd year of the Smog Check to
9 people with X-year-old car and older and say, *oh, by*
10 *the way, we've got - we're going to give you \$650 to*
11 *get rid of your car,* and people take them up on that.

12 And so what South Coast is doing is on the
13 odd year of that person's Smog Check, if they have been
14 caught by an RSD as a high emitter, then they send that
15 person a notice saying - and I don't know exactly what
16 the letter says so I'm just guessing here it's that,
17 *oh, you were seen to be a high emitter. You know, you*
18 *can voluntarily have free repairs or voluntarily scrap*
19 *your car and this is how much,* you know, and emphasize
20 that this is a voluntary program.

21 MEMBER HISSERICH: And are there no income
22 criteria associated with that?

23 MS. MORROW: I'd like to -

24 CHAIR WEISSER: That's correct, no income
25 criteria. Completely voluntary.

1 MEMBER HISSERICH: So if you had a '68
2 whatever –

3 MS. MORROW: Well, I'm not sure if the
4 credited vehicles are cars that have to be within the
5 Smog Check Program or if they would count older cars.

6 MEMBER HISSERICH: Older ones, yeah.

7 CHAIR WEISSER: And I can't answer that
8 either.

9 MS. MORROW: Yeah, I don't know off the top
10 of my head.

11 MEMBER HISSERICH: So this is evolving, I
12 guess you're saying.

13 MS. MORROW: Well, South Coast has pretty
14 much developed a procedure, but I don't know all those
15 details of it.

16 MEMBER HISSERICH: Okay.

17 CHAIR WEISSER: Further information on this
18 can be gained from the South Coast Air Quality
19 Management District.

20 MS. MORROW: Yeah.

21 CHAIR WEISSER: The gentleman's name who is
22 running the program is Dean Saito, S-a-I-t-o.

23 MS. MORROW: And also, if you wanted to take
24 a look at the criteria that ARB developed for the Carl
25 Moyer – for the Vehicle Retirement Program, it is on

1 the website. The presentations from the workshops are
2 there and the South Coast criteria, special criteria
3 for them is also there.

4 CHAIR WEISSER: And there are a lot of
5 interesting questions and comments and suggestions
6 being made associated with those Carl Moyer guidelines.

7 MS. MORROW: Yeah. And they are in draft
8 form right now, and if you do have some comments, this
9 is the time to make them. I believe that they will be
10 taking those guidelines to the Board in November.

11 CHAIR WEISSER: I want to compliment the ARB
12 on the way it conducts the development and review and
13 public opportunity to comment on its guidelines. In
14 this in particular you're providing a substantial
15 opportunity to review a long complex series of
16 guidelines necessary to cover the implementation of
17 this new very large barrel of money available for
18 emission reduction opportunities.

19 We'll ask Mr. Pearman for his question?

20 MEMBER PEARMAN: You had mentioned a special
21 meeting when Mr. Cackette comes back to help shape the
22 scope of the Sierra Research work. Is that a public
23 meeting?

24 MS. MORROW: No, it's a contractor/
25 contractee meeting.

1 MEMBER PEARMAN: Okay. And you said once
2 that tentative scope of work and data plan is ready,
3 then IMRC would get to see that draft, so to speak?

4 MS. MORROW: Would have opportunity to review
5 it, yes, and provide comments.

6 MEMBER PEARMAN: Okay.

7 CHAIR WEISSER: Is BAR going to be present at
8 that meeting with the contractor?

9 MS. MORROW: Oh, yes. Yes.

10 CHAIR WEISSER: Do you want the IMRC there?

11 MS. MORROW: That isn't a decision that I can
12 make.

13 CHAIR WEISSER: Ah.

14 MEMBER PEARMAN: Could we ask that he be
15 invited, Mr. Carlisle, perhaps?

16 CHAIR WEISSER: Actually, I think if there
17 would be an invitation it would be helpful to have
18 someone like Rocky and the people who are involved in
19 our work on this sort of research, the evaluation, and
20 I forget who's on that committee. But they may not
21 want that. And recognize that us not being involved
22 also provides some distance and allows independence of
23 our review, so there's pluses and minuses. I don't
24 have an agenda here whatsoever, but you guys make the
25 call as you see fit.

1 Did you have a further question?

2 MEMBER PEARMAN: No.

3 CHAIR WEISSER: Okay. Sylvia, thank you very
4 much for your report.

5 MS. MORROW: All right, thank you.

6 CHAIR WEISSER: We have questions so please
7 hang around, and we'll start with Mr. Peters, on the
8 clock.

9 MR. PETERS: Mr. Chairman and Committee, I'm
10 Charlie Peters, Clean Air Performance Professionals,
11 and we're here because we're concerned with motorist
12 issues.

13 Interesting comments by the Air Resources
14 Board. I have some information for the Committee, and
15 since I've been informed today that sexual harassment
16 charges are being considered against me by your
17 secretary, I guess I have to give this to the person
18 who informed me, Mr. Rocky Carlisle. And in there is
19 the *Sacramento Bee* article where Mr. Cackette is making
20 the decisions by carrying them to the Air Resources
21 Board on smoking cars, so it appears as though the
22 Bureau of Automotive Repair is not allowed to be a part
23 of the decision process, it's the Air Resources Board
24 making the decisions.

25 There's the latest letter in response to a

1 gentleman whose issues I've been bringing up for some
2 time, Mr. Cruz, the current status.

3 You will find in there a response, apparently
4 a memorandum from the Air Resources Board in regards to
5 the U-Haul etcetera issue that the Committee, Mr. Rocky
6 provided some information on, indicating 1.43 million
7 cars in California not subject to Smog Check, which may
8 be appropriate to consider.

9 And the last page inside is indicating that
10 even the air districts are referring everything to the
11 Air Resources Board on policy, and since I happen to be
12 listed as an opponent to AB386 unless it's amended and
13 put in some quality auditing to improve how the
14 public's being treated, which the chair is very
15 obviously opposed to, and the Committee, it makes the
16 sexual harassment indicator very interesting.

17 Thank you, Mr. Chairman.

18 CHAIR WEISSER: Okay. Thank you. Chris.

19 MR. ERVINE: Chris Ervine, Coalition of State
20 Test-and-repair Stations. Can you answer a question
21 for me? How many of the vehicles that you tested or
22 what percentage had technician-induced failures on the
23 evap testing? Not necessarily intentional but -

24 MS. MORROW: None of them had intentionally
25 induced evaporative problems. How they were selected

1 is BAR had tested a numerous amount of vehicles on the
2 roadside using the low pressure evap test. We called -
3 ARB has a contract to call vehicles in. ARB staff
4 called those vehicles in, they were tested to make sure
5 that they still failed the low pressure evap test and
6 then they were diagnosed and repaired and then
7 subsequently passed the low pressure evap test.

8 MR. ERVINE: Okay. What my question is, were
9 any of these failures due to something that in
10 disconnecting the system? Okay.

11 CHAIR WEISSER: And the response was no.

12 MR. ERVINE: Correct. What I would like to
13 request is that the IMRC witness a couple of these
14 vehicles being tested using the low pressure evap
15 system testing, and I would like for the industry to
16 prescribe which cars they would like to have tested,
17 because BAR is going to, or ARB is no doubt going to
18 pick a vehicle that is very easy to get to and doesn't
19 have a problem with plastic lines breaking because you
20 looked at them wrong, so I would like industry to be a
21 part of this and actually have IMRC witness the testing
22 and what you have to go through to do some of this
23 testing. I'd also like for ARB to let industry know
24 just exactly what they want in the testing prior to it.

25 And then the other thing I have a concern

1 with is on the scrappage. Whatever happened to owner
2 responsibility to properly maintain your vehicle in a
3 safe and non-polluting manner? You know, this state is
4 getting to be the biggest welfare state in the world
5 and everything's free here and taxpayers are paying for
6 it, and taxpayers are slowly becoming a minority and
7 pretty soon you're not going to be able to get enough
8 money together for all your free programs.

9 CHAIR WEISSER: Thank you, Chris. I, In
10 regard to your first series of suggestions, think it
11 would be desirable to have perhaps Rocky, who's
12 technically astute, be an observer if possible at some
13 of these procedures. And I don't know what the Bureau
14 or ARB's attitude is about soliciting tough cases,
15 which undoubtedly is what would be coming forward from
16 the industry, to see how they work, but it might be a
17 good idea and it's being put up for your consideration,
18 Sylvia.

19 MS. MORROW: One of the things also is early
20 on in the beginning of this year BAR conducted roadside
21 tests of the low pressure evap, and I don't know off
22 the top of my head exactly how many vehicles they
23 tested but I do want to say that it was over 1,000, and
24 when they tested them they were able to test over 90
25 percent of the vehicles that are out there. They were

1 able to conduct the test properly using the pinch
2 diagram that has been discussed earlier at these
3 meetings and following the appropriate procedures.

4 As far as the ARB staff, they were trained by
5 BAR staff on how to do the test, and so –

6 CHAIR WEISSER: I guess, Sylvia, let me
7 interrupt. I'm hearing the industry through Chris
8 waving a bright yellow or red flag saying, gee, this is
9 something you need to consider, and if I were in your
10 shoes I'd be trying to at least see what they have to
11 say.

12 MS. MORROW: I mean, it is something that
13 needs to be considered. And again, if the low pressure
14 evap test is implemented, BAR is still required to go
15 through all the necessary regulatory workshops and
16 comments before it's actually implemented, so there is
17 a process that still needs to happen. This is just,
18 you know, looking at the preliminary data, are there
19 cost-effective emission reductions that can be had by
20 this.

21 CHAIR WEISSER: That I understand and I hope
22 Chris does, too. You're dealing with the first
23 threshold question.

24 MS. MORROW: Yes.

25 CHAIR WEISSER: Are there potential

1 emissions. You're not dealing with is this
2 implementable at this instant.

3 MS. MORROW: Well, we're looking at all of
4 those issues.

5 CHAIR WEISSER: Okay. Regarding the second
6 comment, Chris, the reason that the state is coming up
7 with funding from, I might add, appropriate sources,
8 not general funding, is because of the difficult
9 challenge that the state faces overall in achieving its
10 requirements to the federal government and our own
11 California Clean Air Act in meeting air quality
12 standards. I'm not asking for your response, Chris,
13 thank you.

14 MR. ERVINE: Yes, sir.

15 MR. NOBRIGA: Larry Nobriga, Automotive
16 Services Council of California. We keep talking about
17 cost-effectiveness, we keep talking about cost per ton
18 of reduction. Does that include what it costs somebody
19 to buy the equipment or is it just from a consumer
20 standpoint?

21 My thing here is we've got something in low
22 pressure evap, my understanding is would be something
23 we would use on pre-OBD2 vehicles, so we're talking
24 about in today's world '76 through, let's say '94
25 vehicles. That's diminishing returns. What will it

1 cost me to stay in the business? Will I ever recoup my
2 money, or anybody that's in the Smog Check business? I
3 think that that has to be a very important factor in
4 this.

5 CHAIR WEISSER: Couldn't agree more with you.
6 That needs to be looked at carefully.

7 - oOo -

8 Very good. Now we'll receive a report from
9 the Bureau of Automotive Repair.

10 If you could hang around, Sylvia, it will be
11 worth your while.

12 MR. RAMOS: I was going to say good morning,
13 but I guess it's noon, so Wayne Ramos with the Bureau
14 of Automotive Repair. I just want to, before I get
15 into my opening BAR update, I just want to clarify with
16 respect to your question to David Howe, the enforcement
17 monitor, as to the Bureau's mission statement. I think
18 he might be referring to the Department's mission
19 statement, which I don't believe does contain any
20 elements relative to air quality, but if you had a copy
21 of the Bureau's mission statement -

22 CHAIR WEISSER: Which I don't.

23 MR. RAMOS: - it clearly does specify that
24 the goal of the Bureau, the emphasis of the Bureau is
25 in air quality, so I wanted to clarify that.

1 CHAIR WEISSER: That's great. And that's an
2 important clarification, I appreciate that.

3 MR. RAMOS: Okay. The first element with
4 respect to the status of the referee contract, as I
5 alluded to in the last IMRC meeting, there hasn't been
6 much changes with respect to our role. The Bureau is
7 still in the progress of evaluating the referee process
8 and we're also in the process of developing an RFP to
9 reduce the overall contract cost of the referee. And
10 in the meantime the contract with the Community College
11 Foundation has been extended, so there hasn't been much
12 changes other than an ongoing evaluation of how we
13 could reduce the costs associated with that contract,
14 and that may be the reason why you may see some
15 increase in costs from the referee standpoint in terms
16 of the various services that they provide.

17 CHAIR WEISSER: Consumer co-pay sorts of
18 things.

19 MR. RAMOS: Right, yeah.

20 CHAIR WEISSER: What other sorts of things
21 are you looking at in terms of opportunities to reduce
22 costs, or are there other things you can share with us
23 yet or would it be better to wait until --

24 MR. RAMOS: Well, no. One of the elements
25 that we're looking at, which is a big chunk of what the

1 referee does, and that's the consumer disputes. What
2 we're looking at is from the BAR standpoint to absorb
3 that element of it by having the field offices and the
4 field personnel actually do those consumer dispute
5 elements of that process.

6 CHAIR WEISSER: Ah.

7 MR. RAMOS: Which in turn would take away a
8 part of their responsibilities, which you would then
9 have an element where we can adjust some of the cost
10 factors of the contract, so that's one element that
11 we're looking at.

12 CHAIR WEISSER: So these are the field staff
13 who now are currently involved in the enforcement
14 program.

15 MR. RAMOS: Right, but also our field
16 personnel also mediate consumer complaints on the Smog
17 Check Program, so the disputes somewhat coincide with a
18 consumer complaint that we currently deal with anyway.

19 CHAIR WEISSER: Yeah. That's an interesting
20 idea.

21 MR. RAMOS: Right. So, you've also asked
22 that I give an update on the repair cost waiver
23 adjustment relative to the Consumer Price Index. We've
24 looked into that. The Bureau has looked into the
25 current \$450 repair cost waiver limit to establish the

1 benefits, if any, in adjusting the cost to match the
2 Consumer Price Index.

3 What we looked at was the 2004 calendar year
4 and we found that there aren't any realistic benefits
5 that we would achieve by increasing that cost, and the
6 basis for that is that we looked at the entire general
7 population of Smog Check test-and-repair stations, and
8 their average costs were somewhere around \$180. We
9 then looked at the average cost associated with the
10 Consumer Assistance Program over that same course of
11 2004 calendar year, and their costs are around \$350,
12 and both of those --

13 CHAIR WEISSER: Average costs.

14 MR. RAMOS: Average costs, which are both
15 well within the \$450.

16 CHAIR WEISSER: Is that the mean or the
17 median, or what do you mean by average?

18 MR. RAMOS: Average being median.

19 CHAIR WEISSER: Median.

20 MR. RAMOS: Yes.

21 CHAIR WEISSER: The 50 percent mark.

22 MR. RAMOS: Yes, yes.

23 CHAIR WEISSER: So in other words, 50 percent
24 of the repairs were more expensive than that and 50
25 percent were less expensive.

1 MR. RAMOS: Right.

2 CHAIR WEISSER: What percentage of repairs
3 exceeded the \$450 limit, would have exceeded?

4 MR. RAMOS: Well, the only thing I have that
5 might be relative to that question is that the referee,
6 we looked at that same calendar year and the referee
7 issued 1,640 waivers. Now, that wasn't just cost
8 waivers, that was waivers as a whole, which there may
9 be some parts exemption waivers that they issued along
10 with that, and that's a very small figure when you look
11 at over that course of the year there's 11 million
12 tests or somewhat approximately 11 million tests done
13 over the course of 2004.

14 CHAIR WEISSER: I'll return to that when
15 you're done.

16 MR. RAMOS: Okay.

17 CHAIR WEISSER: Okay.

18 MR. RAMOS: That's our assessment of the cost
19 index.

20 The next item would be, some of you may have
21 seen or heard on the local news on August 3rd the
22 Bureau of Automotive Repair participated in a press
23 conference that was held at the Java City headquarters
24 in Sacramento to kick off a major education and
25 enforcement campaign targeting illegal street racing in

1 California. This particular location was near a site
2 where a Java City employee, which was a young single
3 mother, was tragically killed by a street racer when
4 she attempted to enter onto a highway after leaving
5 work, and as a result of that, the Office of Traffic
6 Safety announced awarding a \$5 million package of
7 federal grants to help curb illegal street racing.

8 Sacramento is the first of ten regions
9 throughout the state that will share in those grants.
10 And BAR, as far as our role in participating in that,
11 we have been actively participating with law
12 enforcement over actually the past several years in
13 which we have been providing training to law
14 enforcement personnel with respect to educating them in
15 how they can identify certain modifications to
16 vehicles. We've also participated by supplying law
17 enforcement with vehicles that we've set up as examples
18 so that they can better educate their officers in terms
19 of detecting these modifications, and as well as
20 playing an active role when they want to seek our
21 assistance, basically out in the field we'll actually
22 do some visual inspections on their behalf to detect
23 vehicles that may be modified.

24 The last element I'm going to turn over to
25 Marty Gunn, who is part of our Consumer Assistance

1 Program, and he'll be able to give you an update on our
2 Breathe Easier Campaign that's been going on at the
3 State Fair, as many of you may have heard, as well as
4 an overview of the entire Consumer Assistance Program,
5 so I believe he has a PowerPoint presentation he'll
6 provide you.

7 CHAIR WEISSER: Thank you. Is there a way
8 for us to dim?

9 MR. GUNN: Good afternoon, Mr. Chairperson
10 and Committee Members. I am Marty Gunn and I do work
11 for the Bureau of Automotive Repair Consumer Assistance
12 Program. My purpose being here today is to give you an
13 update, the Committee an update on BAR's Vehicle
14 Retirement Program. In doing so, it's probably
15 important to maybe just establish some of the
16 foundational background information so we're all clear
17 on which vehicle retirement program we're talking
18 about. Then I'll give you an update on our 2004/2005
19 fiscal year that just concluded. I'll share with you
20 goals that have been set for us for the current fiscal
21 year, and then time permitting, share with you some
22 interesting information that we got from one of our
23 consumer surveys.

24 CHAIR WEISSER: If I can interrupt you before
25 you even get started for a minute. Can you give me an

1 idea of how much time your presentation will be?

2 MR. GUNN: Very short, five minutes maybe,
3 six minutes.

4 CHAIR WEISSER: Five. And Sylvia, how long
5 can you hang?

6 MS. MORROW: (Inaudible)

7 CHAIR WEISSER: Okay. I'll need like a
8 minute after we're done with this item to go through
9 things that I'm interested in hearing from both BAR and
10 ARB in the future.

11 Please continue. I'm sorry to interrupt.

12 MR. GUNN: I'll talk fast, Sylvia.

13 CHAIR WEISSER: No, don't, just take your
14 time.

15 [Begin presentation]

16 MR. GUNN: Some background information. The
17 purpose of BAR's Consumer Assistance Program, whether
18 it be repair assistance or more specifically today the
19 Vehicle Retirement Program, is to provide options for
20 California consumers who fail their biennial Smog
21 Check, and I really want to emphasize the word
22 *biennial*, so we can help folks out that have gotten a
23 registration renewal notice from DMV saying that they
24 need a Smog Check.

25 We are not available to consumers needing a

1 Smog Check for initial registration because maybe a
2 transfer of ownership has occurred or the vehicle is
3 being brought into the state for the first time from
4 another state or out of the country. In addition,
5 we're not available to business fleets, government
6 fleets and/or non-profit organizations.

7 The program is funded through a portion of
8 the smog abatement fee. This is a \$12 part of the
9 renewal fee for registration for newer vehicles that
10 have been exempted from the Smog Check Program. Just
11 to give you an idea, the vehicles that are primarily
12 eligible for vehicle retirement are from 1976 through
13 1999 vehicles.

14 The program, as you probably know, was just
15 reinstated last September after a two-and-a-half-year
16 hiatus that was due to the budget crisis. We are
17 allocated \$4.5 million, and initially the only change
18 other than being reinstated is that we offered \$500 per
19 vehicle as opposed to the previous version of the
20 program that offered \$1,000. Now that was a short-term
21 change because on March 16th, 2005, when the Governor
22 kicked off the Breathe Easier Campaign, that \$1,000
23 price per vehicle was reinstated.

24 When the dust settled at the end of the
25 fiscal year, we retired 4,775 vehicles for a total

1 emission reduction for hydrocarbons and NOX of 224.6
2 tons, 1,453.5 tons of carbon monoxide, and we spent
3 essentially our entire budget, so we retired every
4 vehicle we possibly could, and that was no small feat.

5 This graph shows you a breakdown of how many
6 vehicles by year we retired, and also it shows you the
7 difference based upon the price we paid, and what this
8 graph really tells us is there's really no difference
9 in terms of model year whether we paid \$500 or \$1,000;
10 the model year that we bought stayed the same. The
11 most popular vehicle was a 1987 vehicle followed by
12 1988 and a close third was 1985. It went down
13 exponentially from there whether it was newer or an
14 older vehicle.

15 This graph shows you vehicles retired by
16 county, Los Angeles being the big leader, but something
17 that surprised us is the Bay Area when you take all the
18 counties in aggregate came in pretty close, they did a
19 really good showing and I'm not really sure why. Maybe
20 it's because the area went enhanced. But obviously the
21 most popular area is Southern California, the Bay Area,
22 Sacramento and Fresno.

23 Consumers can retire their vehicles at any
24 one of 33 participating dismantlers, 16 of which are
25 stretched across Northern California, 12 in Southern

1 California, and 5 between Fresno and Bakersfield.

2 Goals. As far as our goals for this fiscal
3 year, the Breathe Easier Campaign has shown support for
4 both CAP's repair assistance and Vehicle Retirement
5 Program. The goal for vehicle retirement is to retire
6 150,000 vehicles over 10 years, which equates to 15,000
7 vehicles this year, and we have been funded to do so.
8 The goal is 900 tons a year for an aggregate of 9,000
9 tons over 10 years.

10 Now that's an update on the program, and just
11 a couple of snippets of information that we get from
12 our survey. Our consumers are asked to voluntarily
13 complete a survey at the time they retire their vehicle
14 at the dismantler, and here's some information that we
15 were able to glean from consumers kind enough to
16 participate.

17 Sixty-one percent of the consumers learned of
18 vehicle retirement at their Smog Check station either
19 by reading the vehicle inspection report or through a
20 conversation with the station personnel.

21 Sixty-three percent of the vehicles retired
22 were used for daily commuting, whether it be to work or
23 to school. The consumer estimated the average yearly
24 mileage for that vehicle in excess of 8,000 miles, and
25 the consumer also estimated that they thought the

1 vehicle would continue in operation for another 4 years
2 if it were not for the Vehicle Retirement Program.

3 Forty-two percent of the consumers planned on
4 replacing the retired vehicle with a compact, but
5 interestingly enough, four percent were going to look
6 into buying a hybrid, which I thought was good news.

7 And there you have it, an update on BAR's
8 Consumer Assistance Vehicle Retirement Program.

9 [End presentation]

10 CHAIR WEISSER: A couple of questions. Can
11 you flip back to your, I think it's the second chart,
12 the one that showed -- keep going -- keep going -- there.
13 Have you guys figured out the cost effectiveness of
14 this particular program?

15 MR. GUNN: You know, there's a lot of
16 perspectives, different ways of looking at cost
17 effectiveness, and yes, they're discussed all the time.
18 I'm sorry I didn't bring that information with me.

19 CHAIR WEISSER: That would be interesting for
20 this Committee to learn. Is there -- if you go back one
21 more chart you have the numbers of the vehicles that
22 were retired under the 500 bucks a pop versus the 1,000
23 bucks a pop, and I notice around a 6-month period of
24 time for the first program, a 3-month period of time
25 for the second program, and in half the amount of time

1 you got almost triple the amount of cars. I'm
2 presuming that you raised the price from 500 to 1,000
3 to spur demand in terms of people willing to turn their
4 cars in; is that correct?

5 MR. GUNN: Correct.

6 CHAIR WEISSER: And was that thesis borne out
7 by the results in your mind?

8 MR. GUNN: Yes.

9 CHAIR WEISSER: Thank you. And my last
10 question is, when we were on the radio, you have a
11 great radio voice and you should be a departmental
12 spokesperson.

13 MR. GUNN: Thank you. But one other thing to
14 mention about this is something that Vic brought up is
15 this was done in nine months. We took a program that
16 had stopped and brought it fully up to speed in nine
17 months and it was just incredible and I can't thank my
18 co-workers enough, they worked very hard at this
19 program.

20 CHAIR WEISSER: I would be particularly
21 interested, and not interested in waiting until
22 September, in getting a sense of the cost effectiveness
23 of the overall effort. If you could let Rocky know and
24 he could pass that on to us. I'm just always curious
25 in terms of, as you say, there are various ways to

1 measure it, but I want to see what you think you have.

2 MR. GUNN: I'll do my very best.

3 CHAIR WEISSER: Okay. So we'll start with
4 questions starting with Mr. Pearman.

5 MEMBER PEARMAN: I echo that last comment
6 because I counted like \$20,000 a ton in my first just
7 rough overall math, so I want to see how they do it.

8 And secondly, I thought you had stated that
9 this chart that had number of vehicles retired by year
10 and amount, that your conclusion was it didn't matter
11 whether you paid \$500 or 1,000 to retire them. Is that
12 what you said was the conclusion you draw from that
13 chart?

14 MR. GUNN: Yes and no. It didn't matter in
15 terms of buying a different year. Some people thought
16 if you offered \$1,000 you'd get more newer vehicles,
17 and that didn't play out. What it did do is it
18 increased the volume, so it didn't have much effect at
19 all regarding what year vehicles we were buying, but it
20 obviously enhanced participation.

21 MEMBER PEARMAN: Some people thought that if
22 you paid more you'd get newer vehicles?

23 MR. GUNN: That was the theory.

24 MEMBER PEARMAN: We would want the opposite,
25 though, we want more older vehicles, don't we?

1 MR. GUNN: Yeah.

2 MEMBER PEARMAN: So, okay. Thank you.

3 CHAIR WEISSER: Mr. DeCota.

4 MEMBER DECOTA: I notice that you have 33
5 auto dismantlers that participate in the program. Do
6 you limit that or is it open to any automotive
7 dismantler; how does that work?

8 MR. GUNN: Yes, they're invited to bid for
9 the contract occasionally, maybe every two years, I'm
10 not really sure. But yes, it's opened up to all
11 licensed auto dismantlers in the state.

12 MEMBER DECOTA: I see, but they do it on a
13 bid on a contract basis?

14 MR. GUNN: Correct.

15 MEMBER DECOTA: And the reason being?

16 MR. GUNN: Because there has to be a contract
17 in place in order for the state to reimburse the
18 dismantler.

19 MEMBER DECOTA: Okay.

20 MR. GUNN: That's the method of payment and
21 there are certain agreements that they enter into.

22 CHAIR WEISSER: You also need to make sure
23 the hazardous elements of the car are handled in a
24 proper way.

25 MEMBER DECOTA: Do you have a demand over and

1 above the 33 to get a contract with you on that or is
2 it – I mean, there's got to be hundreds of auto
3 dismantlers in the State of California.

4 MR. GUNN: Correct, but there's also a
5 requirement where they're paying customers \$1,000 and
6 have to get reimbursed from the state, so there's a
7 certain amount of floating money there that not
8 everybody's attracted to.

9 MEMBER DECOTA: I see. Okay.

10 CHAIR WEISSER: Tyrone?

11 MEMBER BUCKLEY: To follow up on that, did
12 only 33 apply?

13 MR. GUNN: No. I don't know how many
14 applied.

15 MEMBER BUCKLEY: Okay. My original question,
16 how many surveys did you get back?

17 MR. GUNN: Well, they're still tabulating the
18 surveys. I might have counted them up.

19 CHAIR WEISSER: Approximately.

20 MEMBER BUCKLEY: Yeah, that's fine.

21 MR. GUNN: Yeah, it was in the 1500 range.
22 Different questions got different responses. And
23 again, it's really preliminary. They're going to
24 finish counting up the quarter and make a report.

25 MEMBER BUCKLEY: Will you go to your final

1 slide? There was something I had a question on there.
2 You say here that 42 percent of the consumers planned
3 on replacing their retired vehicle with a used compact
4 vehicle. Did you ask any questions about whether they
5 intended to use the money to buy another commuting car,
6 a car they intend to commute with?

7 MR. GUNN: Yeah. They were asked in this
8 particular question, *if you are going to replace the*
9 *vehicle, what kind of vehicle are you going to replace*
10 *it with, an SUV, a station wagon, I'm not sure what the*
11 *actual choices were, and this was the greatest one, 42*
12 *percent said they were going to buy a compact car.*

13 CHAIR WEISSER: But did they indicate what
14 the car would be used for, like commuting? You
15 indicate 63 percent of these -

16 MR. GUNN: No, they didn't indicate in this
17 question. We're just assuming if they're using it now
18 to commute they're going to use another car to commute.

19 CHAIR WEISSER: Thank you.

20 MEMBER BUCKLEY: I think that would be
21 interesting to know, because I always wonder what folks
22 are using the \$1,000 for and if someone's retiring a
23 car they don't use very much and using it towards, I
24 don't know, a new recreational vehicle or something
25 they're not going to use much, I wonder how much that

1 impacts.

2 CHAIR WEISSER: Well, you do have the average
3 mileage the consumer estimates, and I underline the
4 word *estimates* for the cars that they're scrapping, and
5 I don't know if you could possibly come up with a
6 reason to assume an increase or decrease in the number
7 of miles on a replacement vehicle, I don't know.

8 Jeffrey?

9 MEMBER WILLIAMS: I too am very interested in
10 this consumer survey and the sooner you can get us a
11 final report, the more exciting it will be. I find
12 particularly interesting the consumer assessments of
13 the life expectancy being four years because my memory
14 of the famous EMFAC model is it assumes three?

15 CHAIR WEISSER: Yeah. Three years, four
16 years. Maybe the consumers are being optimistic.

17 MEMBER WILLIAMS: Optimistic, but just
18 looking at that suggests such a greater benefit to this
19 program than is factored into the model.

20 CHAIR WEISSER: And recognize, Jeffrey, years
21 have passed and cars last longer that are built in the
22 mid and late eighties than were built in the mid and
23 late seventies.

24 MEMBER WILLIAMS: True.

25 CHAIR WEISSER: Okay. Well, I want to thank

1 you very much for this report.

2 There are a half a dozen items I want to very
3 briefly go over that just to give a heads up to BAR and
4 ARB that you're going to be hearing about and we're
5 going to be asking, or I am going to be asking about
6 until you get bored.

7 Evaporative emission testing is something
8 we're really interested in. We want to find out what
9 the challenges are in terms of program implementation.
10 We want to first find out if it's worth even trying to
11 see what those challenges are in terms of potential
12 program benefits, so my heart is gladdened to hear
13 progress in terms of the testing.

14 I'm interested in follow-up on the report
15 cost waiver limit with more detail. I'm not satisfied,
16 you know, with what I've heard so far because it
17 doesn't seem rational or logical to me that if you were
18 to increase that limit, you wouldn't get emission
19 reduction benefits that were cost-effective, so I guess
20 what I'm asking in that regard is, can you provide us
21 an analysis that leads you to your conclusion that you
22 shouldn't adjust that, that it's not cost-effective to
23 adjust that. So if you could, and I'd like to be
24 present at that if you could in an upcoming meeting,
25 October, or send us some sort of a written analysis,

1 I'd be interested. If I'm wrong, I want to know, but
2 it just seems logical to me that if you were to
3 increase that, you would catch more cars and that would
4 result in additional emission reductions.

5 I'm interested in getting more information on
6 an ongoing basis on what ARB and BAR are doing to
7 expand consumer awareness of the Repair Assistance
8 Program for low income Californians and the
9 availability of Gold Shield stations for those that are
10 seeking financial assistance. In our earlier survey
11 that seemed to be, you know, a hole in the program,
12 consumer awareness of consumer assistance. And more
13 information about why aren't they taking advantage of
14 the program and what can we do to increase their taking
15 advantage.

16 The fourth of course is the remote sensing,
17 we want to keep on top of that and we want to find out
18 what's going on in terms of your research on that. The
19 update in terms of what's going on at ARB in that was,
20 I think, very informative. I'd like to be kept and I
21 think the Committee would like to be kept informed also
22 on the progress of the South Coast independent effort
23 associated with the use of remote sensing for both
24 scrappage and repair of off-cycle vehicles.

25 The sixth item is an issue that we raised a

1 couple months ago, Wayne, and it relates to the, I
2 don't know what you call it but I'll call it the finer
3 emission failure cut points where you break it down
4 more finely, instead of big engine groups, I guess
5 there are smaller engine groups, and I know you guys
6 have been working on that. There's some thought at
7 least by some members of the Committee that that might
8 be another way to increase program effectiveness.

9 So those are issues that if you in your
10 updates could kind of go through and try to identify
11 things that you think might be of interest, progress on
12 those things, I think would be very interesting for
13 this Committee.

14 Jeffrey?

15 MEMBER WILLIAMS: Did I miss it or what's
16 happened to the 2004 joint report?

17 CHAIR WEISSER: See, I'm too delicate to
18 raise that.

19 MS. MORROW: Sylvia Morrow, Air Resources
20 Board. It's still in the review process. It is two
21 agencies, so -

22 CHAIR WEISSER: But we expect it shortly, I'm
23 sure.

24 MS. MORROW: We expect it out at some time.

25 CHAIR WEISSER: Shortly, sure. Robert.

1 MEMBER PEARMAN: Two questions for Mr. Ramos.
2 One, the referee price changes, were those done with
3 the review, consultation and approval of BAR?

4 MR. RAMOS: That I'd have to look into. I
5 did make a note of that as to whether the contract
6 provisions allow for the adjustments that you heard of,
7 so that's an item I'll have to get back to you on.

8 MEMBER PEARMAN: Okay. And then following on
9 Mr. Weisser's question about making the consumer price
10 adjustment, you did say you saw no advantages either
11 now or in the report that he suggested. Could you tell
12 us what the disadvantages would be to making the
13 change, if you perceive any?

14 MR. RAMOS: Well, the disadvantages are the
15 fact that one element to consider is that currently the
16 Consumer Assistance Program provides a \$500 cost
17 factor, which I'm assuming if the cost factors were
18 increased that that would have to be adjusted to
19 coincide with that. That would be one disadvantage of
20 it.

21 CHAIR WEISSER: You mean you'd have to
22 increase the amount of state assistance to low income
23 people in order to achieve desirable repairs?

24 MR. RAMOS: It may be a consideration to make
25 it equivalent to an increase in the -

1 CHAIR WEISSER: Right now they're not
2 equivalent, one's 500 bucks, one's 450.

3 MR. RAMOS: Well, right, there is a slight
4 difference between that, but if you look at what - I
5 believe there was some analysis done using the formula
6 that USEPA had publicized and I don't know if you've
7 done this analysis or looked at this, but if you look
8 at the current 450 cost limit and you plug that into
9 their analysis, it comes out to be \$688.50.

10 CHAIR WEISSER: I have to say I don't
11 understand what you just said.

12 MR. RAMOS: What I'm saying is, if you look
13 on USEPA's publicized formula for calculating the
14 current Consumer Price Index, you would find it to be
15 \$688.50, so that what you would be proposing to do is
16 to adjust the cost limit from the current 450 to \$688.

17 CHAIR WEISSER: But and you indicate that
18 your analysis is showing, at least what you've shared
19 with us, that increasing that by what sounds like
20 almost 50 percent -

21 MR. RAMOS: Right.

22 CHAIR WEISSER: - would not really do
23 anything in terms of reducing emissions.

24 MR. RAMOS: Well, I didn't say it wouldn't do
25 anything in terms of reducing emissions; what I'm

1 saying is that, based upon the average cost today in
2 terms of what the Smog Check stations are charging
3 consumers and versus even when the state supplies, you
4 know, monies towards the Consumer Assistance Program,
5 they're well below the \$450.

6 CHAIR WEISSER: The majority – or pardon me,
7 the median amount.

8 MR. RAMOS: And then you combine that with
9 the number of waivers that are being issued as a result
10 of those that exceed 450 –

11 CHAIR WEISSER: And it's a modest number.

12 MR. RAMOS: – in fact it is very minute.

13 CHAIR WEISSER: Yeah.

14 MR. RAMOS: That's the basis for why we felt
15 there wasn't any real benefit by increasing the cost.
16 The disadvantages being looking at the Consumer
17 Assistance Program's cost limit relative to any
18 adjustments you would make in the Consumer Pricing
19 Index, that would be a disadvantage. The other would
20 be the impact on –

21 CHAIR WEISSER: I'm not sure I'd characterize
22 that as a disadvantage, frankly.

23 MR. RAMOS: Well, it may not be, but –

24 CHAIR WEISSER: I think it would be important
25 for you and for us to know what number of additional

1 repairs would result if the Consumer Price Index was
2 applied as permitted by law to the \$450 limit and what
3 would be the estimate in terms of the cost
4 effectiveness of doing that. And I'm not trying to
5 make any game of it; it just seems to me that's the
6 critical piece of information.

7 MR. RAMOS: That's fine.

8 CHAIR WEISSER: I have no doubt that your
9 average figures are, you know, accurate, but it seems
10 to me that if you were to, as you're saying, increase
11 it 230 bucks-plus, that you are going to be able to
12 require people, require people who are not low income
13 to spend more money to keep their cars in good repair
14 along the lines that Chris was saying earlier, and if
15 you were to do that and if you find that that would be
16 cost-effective, then it would seem to me to be
17 concomitantly imminently fair to increase the level or
18 the amount that the state would contribute to low
19 income people to make cost-effective repairs. That's
20 all.

21 In the joint CARB/BAR report one of the
22 things that you point out in the report -- well, if it's
23 ever released that you point out in the report is the
24 cost limit may have impact on the durability of
25 repairs, so that's another issue, another potential

1 benefit.

2 All I'm suggesting is that this, we need
3 further examination and I'm asking for more
4 information, more data, more understanding of your
5 thinking, because you may be right, I'm open to you
6 being right, I just want to know what the facts are.

7 MR. RAMOS: Okay. I will do more in-depth
8 research on that.

9 CHAIR WEISSER: Excellent. Any further
10 questions among us? We're going to take some public
11 questions, then we're going to break for lunch. We'll
12 start with Mr. Peters.

13 MR. PETERS: Mr. Chairman, I'm Charlie
14 Peters, Clean Air Performance Professionals. Our
15 issues are motorist issues from motorist perspective.

16 Mr. Chairman, I find your analysis of the 450
17 issue to be very interesting. Having participated in
18 this process with the federal guidelines and the Clean
19 Air Act and so on and so forth over time, EPA indicated
20 absolutely emphatically that the 450 issue was in
21 statute and in fact that was not negotiable in any way,
22 shape or form, and that was one of the most absolutely
23 necessary parts of the program and that it was
24 necessary for that to escalate over time, so its cost
25 effectiveness and all the issues that you're bringing

1 up are very interesting, but in fact legally, based on
2 me not being an attorney, et cetera, but what I
3 understood, having attended clean air conferences and
4 so on and asked direct questions of EPA, that that 450
5 figure; i.e., that 688.50 figure may be required by law
6 and subject to the State of California having to pay
7 for past practices et cetera if they don't pay
8 attention to that, just as a consideration for the
9 Committee.

10 The \$12 abatement funding this scrappage, the
11 question is, does the change of ownership money being
12 contributed by the consumer also a part of that? And
13 the issue of the cost effectiveness and the tonnage in
14 the program, the 1992 GM study, EPA's response to that
15 with strong concerns of fraud, the actions of South
16 Coast by the Committee for a Better Environment suit
17 resulting in significant adjustments by South Coast, I
18 think that that's an issue that we've been supporting
19 having a comprehensive random audit of that to
20 determine its cost effectiveness and how that really
21 does work.

22 We're certainly not suggesting that all the
23 cars need to be looked at but that some random sample
24 needs to be looked at. You may have a car that may be
25 polluting in some very significant way and a very minor

1 adjustment may make it meet the federal test
2 procedures. And you may have a transmission that's
3 bad, the thing will go 50 feet. You got to look at the
4 criteria of scrappage, you got to look at the fact that
5 these people don't have to have insurance, they don't
6 have to have a legal car to be on the street, so on and
7 so forth, and take a sample of that and do some sort of
8 an evaluation to have a justification that this is in
9 fact valid public policy.

10 CHAIR WEISSER: I would invite and urge you
11 to go to the open public meetings the ARB conducts, Mr.
12 Peters, on the guidelines for the Moyer program,
13 they're available on the ARB web page, so I think it
14 would be a good idea for you to put forward your
15 suggestions to them while they're in the midst of
16 developing their guidelines.

17 MR. PETERS: I did that when they developed
18 the guidelines incorporating the two together. I went
19 Monday right after you left apparently, and apparently
20 the meeting lasted Monday only about an hour, or two.

21 CHAIR WEISSER: I wasn't there, but thank you
22 very much.

23 MR. PETERS: They indicated that you were
24 going to be there. I apologize for being mistaken.

25 CHAIR WEISSER: Chris.

1 MR. ERVINE: Chris Ervine, Coalition of State
2 Test-and-repair Stations. I have a question. I keep
3 hearing a very high number percentage of vehicles that
4 after they've been repaired are failing within six
5 months. I also have heard that, you know, the test-
6 and-repair industry is repairing the majority of the
7 vehicles for \$180 while the CAP stations are charging
8 about \$350. What I would like to know is what
9 percentage of these vehicles that are failing in six
10 months are CAP cars?

11 You know, the CAP program is looked at very
12 closely and monitored by technicians at CAP and every
13 vehicle is looked at individually, and I would like to
14 think that the vehicles that I've repaired in my shop
15 are lasting a lot longer than six months. The vehicles
16 that are being repaired for \$150 are not being repaired
17 correctly. They've having a cat thrown at them which
18 is covering up the problem and passing the smog. The
19 cat's dead in six months because it's being overheated,
20 and that's why we have this kind of a problem.

21 I'd also like to know if there's any research
22 that's being done on these vehicles that are being
23 scrapped as to what the general physical condition of
24 this vehicle is. My experience with the CAP program is
25 that we see cars that are, you know, if we can get them

1 to pass, it's going to be lucky if they last another
2 year. They're just totally run down. I can guarantee
3 you that you can give some of these people a brand new
4 car and in three years that car will not pass smog.
5 They will not have changed the oil, they won't have
6 done anything to it and basically, you're giving these
7 people \$1,000 for something that's not going to last.
8 What they're going to go out and get for \$1,000 is
9 probably a car that failed smog and somebody threw a
10 cat at it so it'll pass smog and it's not going to pass
11 in six months and you're going to have another high
12 polluting vehicle that may be just polluting a little
13 bit less than the one we just got rid of.

14 My suggestion is that we need to raise the
15 CAP limit because there's a lot of cars out there that
16 are being passed by or they're getting a waiver because
17 they're exceeding the \$500 repair limit, and with the
18 higher limit on the CAP we could get safe cars that are
19 on the road presently owned by this owner that may be
20 properly maintained and for the lack of a catalytic
21 converter as a final repair are being scrapped.

22 CHAIR WEISSER: Thank you, Chris.

23 - oOo -

24 CHAIR WEISSER: Ladies and gentlemen, with
25 that I need to beg one further indulgence from you.

1 Committee Member DeCota has to leave, I think, before
2 we will reconvene to participate in a legislative
3 hearing and he has an issue that he'd like to address
4 prior to his departure, so with your forbearance I'd
5 like to ask Mr. DeCota to share with us what he wants
6 to talk about, but I see someone's waving at me.
7 Rocky?

8 MR. CARLISLE: If he's going to leave I'd
9 also like to just briefly discuss one other issue
10 before we break, before he leaves.

11 CHAIR WEISSER: Uh-huh.

12 MR. CARLISLE: Which requires a motion.

13 CHAIR WEISSER: Okey-dokey. Tell you what,
14 let's let him go first if he requires a motion.

15 What is it?

16 MR. CARLISLE: Just very briefly, we had
17 discussed the hiring of a consultant.

18 CHAIR WEISSER: Oh, this is not going to be
19 brief. Okay, let's start.

20 MR. CARLISLE: It could be.

21 CHAIR WEISSER: Okay.

22 MR. CARLISLE: We, you and I discussed and I
23 discussed this with Judith Lamare as well as hiring Dr.
24 Steve Gould as a retired annuitant, and that could be
25 done very easily. He is a very well-qualified

1 individual. Under tab four I have outlined the duty
2 statement.

3 A very brief background of Dr. Gould's
4 education and experience. He last worked for the
5 Bureau of Automotive Repair, he was a research -

6 CHAIR WEISSER: I think tab five.

7 MR. CARLISLE: Tab five. He was a researcher
8 for the Bureau of Automotive Repair. He's extremely
9 familiar with the VID data. He's familiar with DMV as
10 well, which is a huge database. And in discussions
11 with Jude I firmly believe he would be an asset as a
12 consultant to this Committee, and as a retired
13 annuitant it would be, shall we say, a bargain price.

14 MEMBER DECOTA: Can we speak to this?

15 CHAIR WEISSER: Yeah, that's what we need to
16 do.

17 MEMBER DECOTA: I have known Mr. Gould and
18 worked with him as far as industry and when he was with
19 BAR and found him to be very capable and really quite
20 good at getting the numbers to you, and I think it
21 would be an asset to this Committee that we would move
22 forward with Mr. Gould as a consultant.

23 CHAIR WEISSER: He sounds, I mean everybody,
24 the couple people who have spoken to me only speak
25 highly of him. My question, and perhaps you could

1 address this for us, is what would he be doing? Where
2 is he getting paid out of, what monies is he getting
3 paid out of? What's he going to focus on? That kind
4 of stuff.

5 MR. CARLISLE: First of all, he'd be getting
6 paid out of the Air Resources Board funding. They have
7 very limited contract funds but they do have retired
8 annuitant funding they could use for this position.

9 CHAIR WEISSER: And how many hours are you
10 intending to or are you proposing that he be contracted
11 with?

12 MR. CARLISLE: We're maximized at 960 per
13 year for any retired annuitant.

14 CHAIR WEISSER: So it's up to 50 percent.

15 MR. CARLISLE: Right.

16 CHAIR WEISSER: Okay. And what would you
17 precisely have him be doing?

18 MR. CARLISLE: Precisely, I'd like him to
19 assist Jeffrey and I in the analysis that's ongoing
20 with the comparison of test-and-repair, Gold Shield and
21 test-only. In addition, there's other analyses he
22 could help with that I've kind of outlined in the duty
23 statement. Part of this is reviewing the methodologies
24 for the IMRC program evaluation process we've
25 discussed, develop procedures for collecting and

1 analyzing survey data relative to the Smog Check
2 Program so we could have an in-house process where we
3 evaluate the Smog Check Program, review the statement
4 of work from the Sierra Research contract. And these
5 are just a few of the things that he would be available
6 to assist us with.

7 And there's a number of benefits with a
8 retired annuitant. If at some point we decide that we
9 no longer need his services, then there's not an issue
10 with a contract, it's very simple.

11 CHAIR WEISSER: Well, I'd like to make a
12 motion that the Committee accept the recommendation of
13 our executive officer and authorize the entering into a
14 contract with this retired annuitant.

15 MEMBER DECOTA: There won't be a contract,
16 would there?

17 MR. CARLISLE: We would simply hire him as a
18 retired annuitant.

19 CHAIR WEISSER: Okay, so you don't hire. And
20 how do you fire him?

21 MR. CARLISLE: Same way, say thank you.

22 CHAIR WEISSER: Just say good-bye?

23 MR. CARLISLE: Yes.

24 CHAIR WEISSER: Okay. So I'd like to make a
25 motion that we engage the services of this retired

1 annuitant for the purposes, including but not limited
2 to the purposes identified in the paper put before us
3 in attachment five which Rocky summarized. Is there a
4 second to that motion?

5 MEMBER HISSERICH: Second.

6 CHAIR WEISSER: It's seconded by Mr.
7 Hisserich. Now let's open it up for discussion.
8 Robert.

9 MEMBER PEARMAN: I didn't follow your talk
10 about 50 percent and 960 and all this. How much time,
11 how many hours or whatever do you expect him to work
12 for us over the next year, if you can break it down
13 like that?

14 MR. CARLISLE: To be honest, I would like to
15 maximize his time between now and the end of the year,
16 because the goal is to get out another report by
17 January of next year, and so I estimate his time as
18 probably 500 hours between now and the end of the year.

19 CHAIR WEISSER: And you have sufficient
20 resources in the budget to pay for this?

21 MR. CARLISLE: Correct. It does not come out
22 of our BAR budget, it comes out of our contracts that
23 ARB pays for.

24 CHAIR WEISSER: And you have it confirmed –

25 MR. CARLISLE: I have that confirmed that we

1 have sufficient –

2 CHAIR WEISSER: – in writing?

3 MR. CARLISLE: Well, okay, no, not in writing

4 yet, but I will get that in writing.

5 CHAIR WEISSER: Okay.

6 MEMBER PEARMAN: And just as an aside, Mr.

7 Chairman, it's been really a couple years since I've

8 actually seen a budget of ours. Could you maybe put on

9 the agenda sometime in the next meeting to see what our

10 budget is of staff time that's available to us, et

11 cetera?

12 CHAIR WEISSER: Outstanding suggestion.

13 Could you put that forward in the September meeting?

14 In fact, that's the kind of issue it might be a good

15 idea, Rocky, to send it out beforehand so people have a

16 chance to look at it.

17 MR. CARLISLE: Certainly.

18 CHAIR WEISSER: And then you can chat about

19 it. I'll be very happily not here while you're

20 chatting about it.

21 Other questions? Excuse me, before we take

22 an action we are going to allow public comment.

23 MEMBER KRACOV: Could I just comment on the

24 motion?

25 CHAIR WEISSER: Please, Gideon.

1 MEMBER KRACOV: And like any other budgeting
2 process, that will help us prioritize what we want this
3 person to do also following your recommendations,
4 Rocky.

5 CHAIR WEISSER: And in fact, I think we need
6 to have a job description with prioritized here's what
7 he's going to focus on.

8 MR. CARLISLE: I agree.

9 CHAIR WEISSER: Okay. I think what we could
10 do is kill two birds with one stone by asking Mr.
11 DeCota to bring up the issue he was going to raise
12 associated with research priorities.

13 MEMBER DECOTA: I appreciate the Committee
14 and audience allowing me this opportunity because I
15 have to leave and I know that you won't be here at the
16 next meeting, so what I'd like to do is recommend that
17 some research be done by the Inspection and Maintenance
18 Review Committee in the following area.

19 You know, basically we need to look at the
20 real world business economics of today's Smog Check
21 Program in California. We do a lot of review as far as
22 consumer orientation and so on and so forth, but the
23 health of the Smog Check industry is conducive, I
24 believe, to an appropriate attempt to get the most
25 reductions of emissions through a well incentivized and

1 strong Smog Check testing and automotive repair
2 industry that relates to smog testing.

3 So I would like to recommend that IMRC do an
4 extensive research. Pick a county that's in the
5 enhanced area, any county the Committee or subcommittee
6 so desires. You know, within that area we'd like to
7 have subareas that I'd like to see handled like the
8 number of total test-only, test-and-repair and Gold
9 Shield stations located in that county; the number of
10 registered vehicles subject to the biennial program in
11 that county; the number of vehicles within that county
12 being directed on a biennial basis to test-only; the
13 average consumer's cost for a Smog Check at test-only,
14 test-and-repair and Gold Shield; the total number of
15 dynamometers and equipment available, or stalls or
16 lanes as is better stated, number of lanes available
17 within that county for testing to the consumers, and
18 where are they located, you know, the amounts in test-
19 only, test-and-repair and Gold Shield stations.

20 And there may be others that the other
21 Committee members want to add to this. I'm not saying
22 that this is finite in any means, but these issues
23 could lead to discussions of should this Committee make
24 recommendations to the Legislature or to the ARB or BAR
25 to limit the amount of different types of stations

1 within geographical areas so that there isn't an
2 oversaturation. They even do it with the state Lotto
3 program. You're not going to get four 7-11's in a
4 geographic type vicinity selling lotto tickets.

5 We need to look at this from an economic
6 basis for business. Entrepreneurial businesses are the
7 key to emission reductions. They need to be able to
8 compete in a marketplace that allows them the
9 opportunity to be profitable and also perform their
10 duties, and I think this would be a very good item for
11 discussion, you know, that we could make strong
12 recommendations.

13 I don't think this has ever been done by the
14 Bureau of Automotive Repair nor by the Air Resources
15 Board, and it's something that its time has come,
16 because we don't want -- if history is any precursor,
17 when we saw test-only in the eighties in the L.A. area,
18 we found so many shops and so much fraudulent
19 activities that came about because there wasn't enough
20 dollars in the program to make the program for the
21 legitimate player successful.

22 We have to be careful, and I think the
23 program itself needs to look at that. This is a
24 business of reducing emissions as well as a health
25 issue, and I would hope that the Committee would

1 support my recommendation on this issue. Thank you.

2 CHAIR WEISSER: What I'm going to suggest is
3 that what this Committee needs to do is to spend a
4 considerable amount of time reviewing the scope of
5 research it wants to undertake and that we ask Dennis
6 to translate what he's just put forward into, you know,
7 kind of a written proposal that we could look at in
8 context with the other sorts of things that Committee
9 members might be interested in putting forward, as well
10 as members of the public might have suggestions. So
11 for that reason what I'm going to suggest is that we
12 allow, you know, a period of, let's say three weeks,
13 put it out there that if you have some suggestions in
14 the next three weeks, put them forward in some sort of
15 form, an email to Rocky or whatever, that he can
16 compile so that at our next meeting you can review them
17 in total, particularly since hopefully by then the
18 motion will have passed and we'll have our retired
19 annuitant on board, and we can – you, because I'm not
20 going to be here sadly – can have a robust discussion
21 to provide direction in terms of what you think the
22 priorities should be.

23 I think the issue that Dennis raises is
24 extraordinarily interesting but one that has elements
25 of controversy in it and needs some careful thinking

1 and some careful outlining in terms of how we go about
2 doing it, but it's something that we should be able to
3 talk about as a group. So that would be my suggestion
4 in terms of what Dennis has just suggested.

5 Now, we have before us a motion to approve
6 the executive officer entering into a relationship with
7 a retired annuitant to help us on research. Is there
8 any further discussion from members of the Committee on
9 that? Is there discussion from any members of the
10 audience? Mr. Peters.

11 MR. PETERS: Mr. Chairman and Committee, I'm
12 Charlie Peters, Clean Air Performance Professionals.
13 We're interested in issues affecting the motorists.

14 The doctor's consideration in my perception
15 is an excellent consideration and I support that.

16 CHAIR WEISSER: Thank you very much, Mr.
17 Peters. Oh, I'm sorry, did you have something further
18 on that?

19 MR. PETERS: And in response to, Mr.
20 Chairman, to Mr. DeCota's presentation, I don't see
21 that that presentation fits on the format of the
22 meeting. What he had to say sounded very appropriate.
23 The question is, should that be an agenda item to be
24 considered?

25 CHAIR WEISSER: As it will be.

1 Mr. Ward.

2 And look at item 11.g Charlie and that's
3 where Mr. DeCota's item would fit. Thank you.

4 MR. WARD: Mr. Chair, Randall Ward, Executive
5 Director of the California Emissions Testing Industries
6 Association. I certainly don't have any concerns about
7 Mr. Gould or Dr. Gould. I have not had the pleasure of
8 working with him, but would mention that there is an
9 organization, state organization that fields a number
10 of retirees based on individual expertise and those
11 kinds of things and I have some knowledge of some of
12 those individuals and these individuals are top flight,
13 so depending on the kind of activity that the Committee
14 may want to pursue, it may be worthwhile to utilize
15 those funds, give yourself some latitude to utilize
16 those funds based on where they might best be served.

17 CHAIR WEISSER: Thank you. Could you write
18 me and Executive Officer Carlisle with the name of the
19 organization?

20 MR. WARD: In fact, Dave Capri is, I think is
21 either running it or was running it.

22 CHAIR WEISSER: Yeah, let us know. Do they
23 have a website? Give us the URL, we can check it out.

24 Are there any other comments from the
25 audience? With that, I'll ask for, call a vote. The

1 motion is should we allow the executive officer to hire
2 a retired annuitant to assist us in research for the
3 remainder of this fiscal year, subject to adequate
4 performance? And what's your pleasure, gentlemen? So
5 all in favor of that motion signify by saying aye.

6 IN UNISON: Aye.

7 CHAIR WEISSER: Are there any opposed?
8 Hearing none, the motion is passed.

9 MR. CARLISLE: Thank you, Mr. Chairman.

10 CHAIR WEISSER: With that, what I'd suggest
11 we do is take a 45-minute break and start this meeting
12 promptly when the clock at the back of the room hits a
13 quarter to 2:00. Is that okay, 45 minutes? We should
14 be able to get through the cafeteria or wherever else
15 we're going to eat pretty quickly. So with that, we'll
16 adjourn until a quarter to 2:00.

17 (Noon Recess)

18 - oOo -

19

1 AFTERNOON SESSION

2 CHAIR WEISSER: Okay, the meeting will come
3 to order, if you'll take your seats. I hope you
4 enjoyed as wonderful a lunch as I did. In fact, I hope
5 you did better than my hot dog. I know Wayne didn't.
6 I don't know where everybody else went. That's their
7 loss. Excuse me? A member of the public just said the
8 important people are here, and now with Bud's arrival
9 he's absolutely right.

10 Okay, as will be evident, Mr. DeCota has
11 left. We are only six and therefore we do not comprise
12 a full quorum, we will not be able to take any official
13 actions of the IMRC, and that's okay because we weren't
14 really intending to. But we have important items to
15 review this afternoon, and with your help, people in
16 the audience, we'll try to make some good progress.

17 The first is, I think, unfortunate that we
18 didn't kick the meeting off with this discussion,
19 Rocky, because I think it's particularly interesting,
20 and Rocky, we're going to be asking you to give members
21 of the Committee a briefing on the state comparison of
22 I&M programs, the study that you initiated a couple
23 months ago, and let us know where things stand and what
24 you've found so far.

25 [Begin presentation]

1 MR. CARLISLE: Yeah, this has been kind of
2 fascinating, Mr. Chairman. As you know, I started this
3 just on a couple of topics, but it's been greatly
4 expanded and it continues to be a work in progress, to
5 be honest with you, because although, as this slide
6 shows, there's 33 states plus the District of Columbia.
7 D.C. I have not yet got the information back on yet,
8 but we do have 34 programs listed in here; 2 of them
9 happen to be in Utah but they're totally separate
10 programs.

11 So some programs have multiple -- some states
12 have multiple programs, but strangely enough they're
13 operated by different agencies. For example, in
14 California you could argue that we have four programs
15 in this state, but they're all operated by one
16 department, okay. And when I say programs, there's
17 four different areas, because we have enhanced, we have
18 partially enhanced, we have basic and then we have
19 change of ownership, so those are four distinct
20 programs within the state.

21 The number of vehicles also varies. The
22 number of vehicles subject to the I&M program ranges
23 anywhere from 200k to the 800-pound gorilla, if you
24 will, and that's 23 million in the State of California.
25 This gives you kind of an overview of where these

1 programs lie or reside, and the three biggest I've
2 circled in red are California with 23 million vehicles,
3 Texas with 13 and New York with 10 million vehicles
4 subject to I&M.

5 You notice a lot of the northern states don't
6 have any program. I should mention too that Florida
7 also had a program but they cancelled their program a
8 little over a year ago.

9 CHAIR WEISSER: Rocky, I don't understand
10 this map.

11 MR. CARLISLE: This map shows the little
12 smiley face is every state that has an I&M program, I
13 should explain that. I thought that was appropriate,
14 you know.

15 CHAIR WEISSER: So just hang on for a second.

16 MR. CARLISLE: You bet.

17 CHAIR WEISSER: And you're saying states that
18 don't have a little smiley face have no inspection and
19 maintenance program.

20 MR. CARLISLE: Have no I&M program, correct.
21 The only one that this does not show is Alaska, because
22 Alaska also has an I&M program. And some of the east
23 coast states it's tough to delineate exactly which
24 state they are because they're so small. Delaware
25 doesn't show up that much, but there is a smiley face

1 to indicate they do in fact have a program.

2 CHAIR WEISSER: Okay, please continue.

3 MR. CARLISLE: So when you look at the
4 various programs we have centralized and we have
5 decentralized. Centralized programs are those programs
6 that are operated by a government entity or they're
7 contracted out. Decentralized are typically licensed
8 and privately owned facilities, and when you look at
9 the programs in the U.S. there's 21 decentralized and
10 there's 13 centralized.

11 CHAIR WEISSER: But California is a hybrid of
12 both.

13 MR. CARLISLE: It is a hybrid but for the
14 most part it's considered decentralized because when we
15 say hybrid it's hybrid only to the extent we direct
16 vehicles, but we don't have any contractors, although
17 you could argue that the referee is a contractor and
18 they do some inspections, but the number they do
19 compared to the state are pretty small.

20 You had asked the question specifically about
21 who has a safety program. Twelve states in fact have
22 some kind of safety inspection program. They're in
23 conjunction with I&M. And interestingly enough,
24 Tennessee also includes motorcycle inspections in their
25 safety program. And typically when they have a safety

1 inspection program they're also an annual inspection.

2 CHAIR WEISSER: Annual for both safety and
3 I&M?

4 MR. CARLISLE: Correct.

5 CHAIR WEISSER: And do you have a sense of
6 what their safety programs cover?

7 MR. CARLISLE: I haven't put that in here yet
8 but I certainly can.

9 CHAIR WEISSER: Thank you.

10 MR. CARLISLE: It's typically tires and
11 windshield wipers and lighting and things like that, no
12 cracks in windshields.

13 CHAIR WEISSER: Brakes?

14 MR. CARLISLE: Brakes, yes.

15 CHAIR WEISSER: And you will be developing
16 that?

17 MR. CARLISLE: Yes.

18 CHAIR WEISSER: Okay.

19 MR. CARLISLE: There are seven that have no
20 safety inspections that we could identify, but fifteen
21 did not respond to the question, and part of the
22 problem is, when you look at these programs you get a
23 contact person and oftentimes in state government the
24 contact person is changed, so we're still following up
25 with these other ones where we had no response.

1 When you look, though, at the number of
2 vehicles subject to I&M by state, this is just a graph
3 showing everything from Alaska on over to Wisconsin,
4 and like I mentioned earlier, three kind of stand out,
5 one being California at 23 million vehicles, one being
6 New York and the other being Texas.

7 CHAIR WEISSER: Excuse me. Vehicles subject
8 to I&M, that's vehicles that, for instance, in
9 California would be not exempted because they're new
10 and not exempted because they're old?

11 MR. CARLISLE: No, these would include the
12 exempted vehicles, and we could make an argument
13 they're still at some point subject to the I&M program,
14 so they're still in the pool, if you will.

15 CHAIR WEISSER: That's correct. I guess if
16 they were tampered with you could grab them or
17 something.

18 MR. CARLISLE: Right. Then there's some
19 states that have annual inspections, other states have
20 biennial inspections. The states that have biennial
21 there's 17; 11 programs are annual; 1 program is
22 biennial for enhanced areas and annual for others;
23 another program is biennial for 1982 and newer model
24 year vehicles and annual for 1981 and older model year
25 vehicles, kind of on the order that we had discussed in

1 Committee; and then 2 programs, both in Utah, this is
2 kind of interesting, 6-year and newer model year
3 vehicles are biennial and 7-year and older are annual.

4 CHAIR WEISSER: Mr. Pearman?

5 MEMBER PEARMAN: Oh, the other big ones,
6 Texas and New York, are they biennial or annual?

7 MR. CARLISLE: I would have to look at the
8 spreadsheet, but I do have that behind the presentation
9 in your pamphlet is the spreadsheet that shows each
10 state.

11 MEMBER PEARMAN: I see, okay.

12 MR. CARLISLE: It's behind item three, and if
13 you go toward the back you'll see the spreadsheet I've
14 got inserted back there.

15 CHAIR WEISSER: Mr. Buckley.

16 MEMBER BUCKLEY: Thank you, Mr. Chairman. I
17 was just wondering which program is biennial for 1982
18 and newer model year vehicles?

19 MR. CARLISLE: Let me look that up real
20 quick. Let's see, New Hampshire is annual, New York is
21 annual, Pennsylvania, Texas is annual. Utah is the one
22 that's six years and newer, like I mentioned, seven
23 years and older is annual. And then I must have missed
24 it here.

25 CHAIR WEISSER: Yeah, I don't quite

1 understand the spreadsheet. I don't see Texas, for
2 instance, under the annual or -

3 MR. CARLISLE: Basically, the way the
4 spreadsheet was printed, it goes to the right of the
5 spreadsheet, and so for each state there will be about
6 four pages and then it goes down to the next sheet.

7 CHAIR WEISSER: Okay. I'll never figure it
8 out.

9 MR. CARLISLE: So that'll make it a little
10 bit easier.

11 CHAIR WEISSER: Well, is Texas annual or
12 biennial?

13 MR. CARLISLE: Texas is annual.

14 CHAIR WEISSER: So you're telling me that the
15 two states that most match California in terms of
16 vehicle population, New York and Texas, are both annual
17 programs; is that correct?

18 MR. CARLISLE: Let me verify that with New
19 York, but I believe so. Yes.

20 CHAIR WEISSER: Thank you. Please proceed.

21 MR. CARLISLE: Okay. Another issue we've
22 looked at from time to time has been inspection costs
23 and strangely enough they range from a high of \$70 to
24 zero, because some states totally subsidize the
25 inspection cost.

1 CHAIR WEISSER: So these are costs for the
2 consumer.

3 MR. CARLISLE: Costs for the consumer for the
4 inspection itself, these have nothing to do with
5 repairs. California's average cost off the VID as of
6 the second quarter of this year was \$49, it's actually
7 48-and-change.

8 CHAIR WEISSER: Question. For the states
9 that are subsidizing the inspection costs, what's the
10 average? Do you have that data? You know, you range
11 from 70 to zero.

12 MR. CARLISLE: I do.

13 CHAIR WEISSER: But how much is the subsidy
14 they're paying somebody to do that?

15 MR. CARLISLE: I have no idea what they're
16 paying the contractor.

17 CHAIR WEISSER: Thank you.

18 MR. CARLISLE: The program average is
19 actually 22.64, and it's strange in New Jersey they
20 have what's kind of a hybrid program, they have a
21 centralized and a decentralized program. They have the
22 contractor, which is Parson Engineering Science. If
23 you go to one of their facilities it's \$27. If you go
24 to one of the privately owned stations it's 70.

25 CHAIR WEISSER: That's a fixed price or is

1 that the average price?

2 MR. CARLISLE: That's a fixed price.

3 MEMBER HISSERICH: Do they have a choice

4 where they go or are they directed?

5 MR. CARLISLE: Yes. Yeah, they just have to

6 make an appointment if they go to Parsons.

7 CHAIR WEISSER: So let me understand this.

8 Is it an enhanced test?

9 MR. CARLISLE: It's an enhanced test.

10 CHAIR WEISSER: And they're able to do that,

11 Parsons is able to do that under contract with the

12 State of New Jersey for 27 bucks.

13 MR. CARLISLE: Correct.

14 CHAIR WEISSER: And the person pays 27, the

15 owner of the vehicle pays 27.

16 MR. CARLISLE: Yes.

17 CHAIR WEISSER: And if they go to their

18 neighborhood station -

19 MR. CARLISLE: Test-and-repair station, it's

20 70.

21 CHAIR WEISSER: Or I presume there could also

22 be a private test-only station not contracted with the

23 state, but I doubt - I don't know.

24 MR. CARLISLE: That, I don't know.

25 CHAIR WEISSER: And that's 70 bucks.

1 MR. CARLISLE: Right.

2 CHAIR WEISSER: That's really a remarkable
3 difference.

4 MR. CARLISLE: This breaks down the costs by
5 state, and the lower red line shows you the mean
6 inspection cost for all programs which worked out to
7 23.40, and then there's a mean cost for decentralized
8 programs which is 27.21.

9 CHAIR WEISSER: Yeah, but that's interesting
10 data, but unless it was normalized by, you know,
11 different cost of living –

12 MR. CARLISLE: Correct.

13 CHAIR WEISSER: – it's data that in and of
14 itself is not compelling.

15 MEMBER KRACOV: Also.

16 CHAIR WEISSER: Gideon?

17 MEMBER KRACOV: Are we comparing apples to
18 apples here or do we know if these are – you just asked
19 if it's the enhanced test, but maybe different states
20 are doing different things, too, potentially.

21 MR. CARLISLE: I'm sorry?

22 MEMBER KRACOV: Maybe different states are
23 mandating different testing.

24 MR. CARLISLE: There's all types of different
25 testing, so it ranges from I&M 240 to 2-speed idle, so

1 there's - and I was just -

2 CHAIR WEISSER: But it's interesting

3 information but it's not conclusive.

4 MR. CARLISLE: Right. No.

5 CHAIR WEISSER: Go on.

6 MR. CARLISLE: And the whole purpose was I

7 just wanted to give you an idea of what it looks like

8 so far and we'll continue the analysis as time goes on.

9 CHAIR WEISSER: Could you go back once again?

10 MR. CARLISLE: You bet.

11 CHAIR WEISSER: I guess you put \$70 down for

12 New Jersey rather than 27.

13 MR. CARLISLE: Correct. What I did on all of

14 these to make them somewhat even, I picked the highest

15 number because some had a range. And so again, this

16 data is not normalized, it's just the max cost.

17 CHAIR WEISSER: It's not normalized. You

18 could put it in a range format, couldn't you?

19 MR. CARLISLE: Yes.

20 CHAIR WEISSER: It might be a good idea to

21 have a little -

22 MR. CARLISLE: You bet, we can do that.

23 CHAIR WEISSER: Thank you.

24 MR. CARLISLE: The other issue, the other

25 question we asked these various states are, you know,

1 who can perform repairs as far as repairing a failed
2 vehicle. In 27 of the programs the repairs had to be
3 performed or could be performed by any shop or any
4 technician regardless of where they worked or what kind
5 of shop they worked in; 7 programs require either a
6 licensed repair shop or specially trained technician,
7 and in some cases it wasn't so much the shop but where
8 the technician had received training, and even the
9 training has quite a range which I'll talk about.

10 As an example, in the State of California you
11 have to have, first of all, one year of experience in
12 the automotive arena. You have to have a number of
13 classes, and if you have no ASE certifications and opt
14 to take the alternative training, it equates to 184
15 hours of training. Every two years you have to take
16 recertification training and pass a test.

17 Twenty-two programs require no special
18 training at all, and then twelve programs require some
19 form of special training and/or certification. Some
20 will say, for example, you can either take a hundred-
21 hour training program or you can pass a hundred-
22 question test, so it really runs the gamut, and again,
23 I've outlined what it is by state on the spreadsheet.

24 CHAIR WEISSER: Is California the most
25 rigorous in terms of its requirements?

1 MR. CARLISLE: Yes. The other issue that's
2 come up a number of times is repair waivers. Thirty
3 programs allow some form of repair cost waiver, and the
4 dollar amounts really vary, as I have on another slide.

5 Nevada, for example, has a waiver but if it's
6 a smoking vehicle there is no waiver; you fix it or
7 don't drive it.

8 CHAIR WEISSER: What's a smoking vehicle?

9 MR. CARLISLE: Smoking vehicle, any time
10 they've identified a vehicle by visible smoke, it's a
11 fail in Nevada.

12 Vermont does not allow for waivers, and
13 Oregon allows for provisional waiver. In Oregon, for
14 example, a vehicle if it fails, it's allowed to pass a
15 less stringent test, but if it can't pass that less
16 stringent test it's got to be fixed or, again, parked.

17 CHAIR WEISSER: Excuse me. That waiver is
18 only for low income motorists or low income motorists
19 are allowed to have a lower, a poorer performing car?

20 MR. CARLISLE: Yes, but it can't fail
21 completely, because if it fails the less stringent
22 test, then they can go into the consumer assistance
23 program that they have and it's just repair, there's no
24 cost, there's no \$450 or \$500. They just pay for the
25 cost and they get the car repaired.

1 And it's actually funded, I believe it's
2 through the United Way. It's - well, let me explain
3 that. United Way administers the program, but the
4 monies are collected from donations by Oregon
5 residents, and United Way just administers the funding
6 for the program.

7 CHAIR WEISSER: How interesting.

8 MR. CARLISLE: Yeah. As far as waiver
9 requirements, we're talking about the cost minimum.
10 Again, across the U.S. you have anywhere from a minimum
11 \$50, and this depends typically on year of the vehicle,
12 and in some cases the area, to as much as \$700 repair
13 in Rhode Island. And again, these are minimums, not
14 maximums, so if you had one repair, for example, in
15 Rhode Island that was going to cost \$800, if it was a
16 single repair then you would have to repair the
17 vehicle.

18 CHAIR WEISSER: I don't understand. Isn't
19 800 more than 700?

20 MR. CARLISLE: Yes, but 700 is the repair
21 cost minimum. So let's say it's just one repair, it
22 needs X component and that component is \$800. Then you
23 have to repair it with that \$800 component. Because
24 \$700 is the absolute minimum. You can't do anything
25 for 700, right? The piece you have to replace costs

1 800, so they'd have to buy the \$800 piece to put in the
2 vehicle to fix it. It's a repair cost minimum.

3 MEMBER HISSERICH: What if the repair costs
4 \$600?

5 MR. CARLISLE: You haven't hit the minimum
6 yet.

7 CHAIR WEISSER: So you wouldn't have to do a
8 \$600 repair but you would have to do an \$800?

9 MR. CARLISLE: No. If the repairs can be
10 done for \$500, so be it. But let's say you have a
11 component, take a catalytic converter and you can only
12 find the one catalytic converter that would be \$800.
13 If that was the only component it required then that's
14 what you'd have to put on the vehicle to fix it.

15 CHAIR WEISSER: But if I had to do a \$800
16 catalytic converter and a \$3 gascap, then it's two
17 components and I wouldn't have to do either?

18 MR. CARLISLE: No, you'd still have to -- you
19 have to spend a minimum of \$700 before you are eligible
20 for the waiver.

21 CHAIR WEISSER: Got it, okay, you have to
22 spend a minimum before you're eligible. Well, that's
23 unique.

24 MEMBER HISSERICH: And hard to explain.

25 MR. CARLISLE: That's actually California's

1 law with 450. It's supposed to be a minimum of \$450
2 before you're eligible, but there are some exceptions
3 to that like low income, which is 250.

4 Remote sensing is also used by a number of
5 states. For example, seven programs currently use some
6 form of remote sensing, but the two I found kind of
7 unique was one was Colorado. In Colorado if you go
8 past the remote sensing device and your vehicle blows
9 clean, falls within the clean screen criteria twice,
10 then they give you an option of either paying the test
11 fee and saying thank you very much or you can go get it
12 tested as a Smog Check station. And actually it's
13 centralized in Colorado so it really doesn't matter.

14 MEMBER WILLIAMS: Why would anyone choose to
15 have it tested?

16 MR. CARLISLE: That's a good question, but
17 I'm sure some would. Exactly.

18 CHAIR WEISSER: Thank you, Jeffrey.

19 MR. CARLISLE: In Texas they use a dirty
20 screen option, and what they do in Texas, for example,
21 if you're out here, say, somewhere by Tyler to the east
22 part of Texas, and then you –

23 CHAIR WEISSER: Is that a picture of Dennis?

24 MR. CARLISLE: Yeah, driving a dirty vehicle,
25 yeah. And then you drive into Dallas and you happen to

1 go through remote sensing, if you do that twice, once
2 again you have to go get the vehicle tested. Even if
3 it's in, for example, in California where it would be a
4 basic area or a change of ownership, it would not
5 matter. You're driving into an enhanced area
6 essentially, and then you have to get the vehicle
7 tested. So that's, you know, the off cycle.

8 CHAIR WEISSER: Once again Texas leads in
9 environmental protection. Oh, excuse me, don't run
10 away from this remote sensing. You said seven states,
11 you described two, and you said the others are normal.

12 MR. CARLISLE: Seven -- the other five just
13 collect various data, they don't have a whole lot of
14 use for it yet, so they're just collecting the data.

15 So the bottom line is this is basically a
16 work in progress and I plan to update this spreadsheet
17 as time goes on and I'll keep the Committee updated as
18 (inaudible).

19 [End presentation]

20 CHAIR WEISSER: Well, I would like you to
21 share this information, if you would, with BAR and ARB.
22 I think it's good data that we all should have access
23 to. I wish there was a way that you could make the
24 charts a little less confusing for slow old people like
25 myself to understand.

1 MR. CARLISLE: There's just so much data that
2 I can probably put it on a legal.

3 CHAIR WEISSER: Yeah, that might work.

4 MR. CARLISLE: Spread it out a little bit.
5 That'll help.

6 CHAIR WEISSER: It would just be easier if we
7 had all the information on one line, or maybe -- no, one
8 line.

9 MR. CARLISLE: Well, at one point when I was
10 trying to figure out exactly what I had and what I
11 didn't, I actually pasted everything together and so I
12 had a four-foot by four-foot, you know, poster of all
13 this data.

14 CHAIR WEISSER: Well, just from my
15 standpoint, Rocky, this is really valuable. I think
16 that there are a few things that pop out at me as kind
17 of interesting. We need to observe what's going on in
18 other states. This country is structured in such a way
19 that the states are the laboratory of the nation, and I
20 find it instructive that you have the two other large
21 states in terms of vehicle population subject to Smog
22 Check doing annual inspections, so that's one thing I'd
23 note for the Committee.

24 The second thing I'd note for the Committee
25 and that I'm interesting in finding out more about are

1 the linkage between the I&M programs and the safety
2 inspections. That seems a natural to me and I'd like
3 to find out more about that. I'm sure that's been
4 studied, Rocky, and I'm sure there's a good reason why
5 California does not have a safety inspection program.
6 Could you do some research on the side to tell us why
7 we don't have a safety inspection program? I'm sure
8 there have been studies that show that it really
9 doesn't make sense to ensure that peoples' brakes work
10 and lights work and windshield wipers work at least
11 once every year or two. Could you try to find out and,
12 you know, do a Google or write CHP or DMV and -

13 MR. CARLISLE: I'll contact CHP because they
14 are the authority for the safety inspections.

15 CHAIR WEISSER: Yeah. You know, it's not
16 something - I mean, the CHP is world-renowned in terms
17 of highway safety, they're spectacular.

18 MR. CARLISLE: Yes.

19 CHAIR WEISSER: And I'm sure there's a good
20 reason. You might also want to call NHTSA, National
21 Highway Transportation Safety Administration. I'm
22 interested in that subject. I know it doesn't fall
23 within the Smog Check purview, but the notion of
24 perhaps marrying mandated safety inspections and Smog
25 Check in an annual basis might have a salutary impact

1 on the program, and we'll start down the Gideon.

2 MEMBER KRACOV: As we -- the different topics
3 that we're going to be reporting on and potentially are
4 going to be incorporated into our end-of-the-year
5 report, I think that this information, which was very
6 valuable Rocky, for each of these different topics I
7 think at least one of the areas of analysis should be
8 how the other states do it, so I think that this kind
9 of information can be very helpful as we try to gather
10 the ideas and see what works and what doesn't when
11 we're trying to answer these other topics that we're
12 going to be investigating for the remainder of the
13 year.

14 CHAIR WEISSER: Excellent idea. Mr. Pearman.

15 MEMBER PEARMAN: Off the top of your head,
16 Rocky, do you know if any other states have the test-
17 only versus test-and-repair dichotomy?

18 MR. CARLISLE: I'm not sure if they do or
19 not, I'll check on that.

20 CHAIR WEISSER: Mr. Buckley.

21 MEMBER BUCKLEY: Thank you, Mr. Chair. I had
22 a question on the waiver requirements issue. I was
23 wondering if you could do any analysis with the minimum
24 repair cost in the state compared to the average cost
25 of repairs.

1 So for instance in our state I heard it
2 mentioned earlier the average cost of repairs was \$181,
3 something along those lines, and our minimum repair
4 cost that you just stated was 250 for low income. I
5 wonder if those match up at all.

6 MR. CARLISLE: I'll see if I can get that
7 data.

8 CHAIR WEISSER: It sounds like some of the
9 states weren't particularly forthcoming with the data
10 ergo a work in progress.

11 MR. CARLISLE: Yeah, I think some of it, too,
12 is, you know, you get hold of certain people that may
13 not be their area of expertise. Some will farm you out
14 to the contractor that administers the program.

15 CHAIR WEISSER: Okay. Mr. Williams.

16 MEMBER WILLIAMS: This is probably a hopeless
17 question to ask on top of everything else, but I'm
18 curious whether you've learned how many states say the
19 test must have been passed in order to get a valid
20 vehicle registration and how many have a late fee for
21 doing the test late in contrast to California where you
22 can --

23 MR. CARLISLE: I haven't asked that
24 specifically but I can certainly --

25 MEMBER WILLIAMS: -- wait a little while. I

1 think that would be one area where we've been talking
2 about possibly changing things and it would be useful
3 to know what other states do there.

4 CHAIR WEISSER: Thank you. Mr. Hisserich.

5 MEMBER HISSERICH: No, no questions.

6 CHAIR WEISSER: Ah. Now we'll entertain
7 questions from the audience, we'll start in the front
8 with Mr. Peters.

9 MR. PETERS: Mr. Chairman and Committee, I'm
10 Charlie Peters, Clean Air Performance Professionals.
11 We're interested in the plight of the motorists in this
12 ongoing saga.

13 I just came in as the State of Alaska was
14 mentioned and I didn't hear exactly what went on there,
15 and I thought I heard that data didn't come from Alaska
16 or information was -- I don't know what Rocky said, but
17 I found that particularly interesting in that my
18 interface with people from Alaska managing the program,
19 I find them to be delightful, considerate, responsible
20 and effective and the data is an example of the
21 tampering studies done by the Colorado indicated that
22 they were the best in the country and California took
23 second place in that arena. We were superior to them
24 in a lot of other factors but there. So additionally,
25 if we're not getting information from Alaska, I would

1 highly suggest that we do that. Having not heard what
2 Rocky really said.

3 I found Gideon's question, Mr. Chairman, on
4 New Jersey and the costs and whether or not enhanced
5 and what all that means. In New Jersey the program is
6 with a closed hood. The program was designed by the
7 California Smog Check designer and the head of
8 engineering who got a leave of absence to go there and
9 provide a closed hood inspection, so that could give
10 you some idea as to why there might be a discrepancy in
11 cost since the contractor gets most of the inspections
12 because of the differential in price. That kind of
13 explains the fact that the regular test-and-repair get
14 very little business so they got to change a bunch of
15 money and so you have a big disparity in costs.

16 The Colorado remote sensing and the state
17 contractor that does the inspections, how this
18 interesting option for the consumer. Well, same guy
19 gets the money, it's ESP Envirotest, so that may answer
20 as to why that's a very compatible situation, they get
21 the money no matter what, same folks.

22 So I just responded in that way. Appreciate
23 your allowing me to respond.

24 CHAIR WEISSER: Thank you. Bud.

25 MR. RICE: Bud Rice, Quality Tune-up Shops.

1 Just two quick comments.

2 The first one was again about New Jersey.

3 There's been some comments going back and forth
4 relative to the cost. As I read it, it says, if tested
5 by Parsons, the contractor, it would be \$27. If test
6 by decentralized stations it would be \$70. I wasn't
7 quite sure where those numbers came from, if it was a,
8 if, this is what I think would happen, or if, this is
9 what I know would happen?

10 MR. CARLISLE: No, I believe that was on the
11 website.

12 MR. RICE: On their website?

13 MR. CARLISLE: Yes.

14 MR. RICE: Okay. And then the other comment
15 I had to make was same as yours, Mr. Chairman, in terms
16 of the annual inspections. It would be interesting to
17 try to figure out what the effect to the air would be
18 if in fact we went to an annualized testing regimen.

19 CHAIR WEISSER: Well, I believe the ARB and
20 BAR may have data on that that was used in the
21 development of the recommendation in their last yet-to-
22 be-released report. That's a darn good question.

23 MR. RICE: Well, my question would be in
24 terms of us chasing smaller and smaller returns, maybe
25 there's another way to go get huge returns perhaps by

1 going to an annualized basis as opposed to chasing
2 small things. Thank you.

3 CHAIR WEISSER: Maybe we could ask the
4 agencies to report to us in October over that question.
5 I think it's a question worthwhile exploring.

6 Wayne, what do you think? Yeah. It seems to
7 me that might represent a major leap in terms of our
8 ability to reduce emissions. My recollection from the
9 report, Wayne, is that indeed this was the measure put
10 forward as a way to combat the lack of durability in
11 repairs and particularly in older vehicles, and, you
12 know, what Bud is asking, however, is a broader
13 question as I hear it, Bud, is would there be benefits
14 in extending that to all vehicles subject to Smog
15 Check. Is that correct?

16 And I don't know. I suspect since ARB and
17 BAR came forward in the yet-to-be-released report with
18 the recommendation at 15 years that in fact there was
19 some cut point where that made sense, but if you could
20 just kind of check that out or you might want to
21 mention it to Sylvia and give us, you know, the
22 agencies' best bet or perspective in that regard, that
23 would be, I think, of interest.

24 Gideon.

25 MEMBER KRACOV: I'm wondering, and Rocky I

1 don't know if this was part of your analysis, which
2 again is very helpful, but I'm wondering too if the
3 trend towards OBD and OBD 2 system is something that
4 also the other states are increasingly relying on as
5 well.

6 MR. CARLISLE: Yeah, some of the other states
7 rely exclusively on OBD 2 for '96 and newer. There's
8 both pros and cons on that. The concern is if you have
9 OBD 2 only that you may lose some tailpipe emissions
10 because it's not a real good indicator for, for
11 example, a NOX failure. In spite of the fact that OBD
12 2 is in some peoples' eyes the end all/be all in
13 emissions testing, it does have some drawbacks.

14 MEMBER KRACOV: So are the auto makers using
15 that test for their consumers to try to comply
16 throughout the nation, that's not just for California,
17 then.

18 MR. CARLISLE: Correct.

19 CHAIR WEISSER: Yeah, OBD is national.

20 MR. CARLISLE: It's actually worldwide
21 because there's European OBD 2 as well, or European OBD
22 they call it.

23 CHAIR WEISSER: In some of the countries run
24 by dictators I understand that when the OBD light goes
25 on a light shines on your car saying I'm destroying

1 your air and flashes until you get the car repaired.
2 Don't laugh. There's actually the notion of having an
3 external lamp to identify cars whose emissions systems
4 are showing that they're malfunctioning. Boy, it
5 wouldn't break my heart, I think it sounds like it
6 would be a good way to kind of shame people into
7 getting their cars fixed.

8 MALE VOICE: It's called smoke.

9 CHAIR WEISSER: It's called smoke. Not
10 always, as we know. John.

11 MEMBER HISSERICH: I noticed in here that the
12 max fee in New York and Texas is \$27. In New York it's
13 \$11 upstate and 27 downstate.

14 MR. CARLISLE: Correct.

15 MEMBER HISSERICH: And ours is market driven.
16 I hear various figures in the \$40 range to 50 depending
17 on the market in California. It would be interesting
18 to see if we did go to an annual whether it would, if
19 we left it as a market thing whether it would drive
20 down the annuals because there's obviously more volume,
21 you know, or if we went to an annual would we set a
22 cap? You know, I looked in there when they said annual
23 to see how much they were charging.

24 MR. CARLISLE: Yeah, there's several states
25 that actually statutorily cap the price, I think

1 Georgia is one of them, for example.

2 CHAIR WEISSER: They cap it.

3 MR. CARLISLE: They cap the price.

4 CHAIR WEISSER: They don't believe in the
5 market, I guess.

6 MR. CARLISLE: No.

7 CHAIR WEISSER: Okay, we'll go to the back of
8 the room, there was another question. No? Charlie had
9 one other comment, please.

10 MR. PETERS: Yes, Mr. Chairman. Charlie
11 Peters, Clean Air Performance Professionals, here
12 interested in the motorist plight.

13 Dr. John just brought up the subject of the
14 price and being market based. I think you can probably
15 go just about anywhere in the state and get a Smog
16 Check for 20 bucks, and I think people tend to go some
17 places where they're cheaper sometimes, so I would
18 suggest that if you're going to be touting how much it
19 costs to get a Smog Check in California, a somewhat
20 more comprehensive evaluation other than what somebody
21 said on their TAS machine sometime or another that's
22 posted on the BAR website would be the basis of your
23 evaluation.

24 CHAIR WEISSER: Thank you.

25 MEMBER HISSERICH: I know I paid over 40 the

1 last time I had it done.

2 CHAIR WEISSER: I don't want to tell you how
3 much I paid because it was just embarrassing. It was
4 way more than 40. I went to a dealer and as part of my
5 regular maintenance, and it was way over 40. I didn't
6 even ask. I've learned now to ask. I'm due for one
7 and I will shop.

8 Any other comments on this?

9 I just want to praise you, Rocky. This is a
10 work in progress but it's, you know, really informative
11 and I encourage you to not put it aside. I think this
12 is kind of database that will be useful for all the
13 agencies, us and the public in the future.

14 MR. CARLISLE: Thank you.

15 CHAIR WEISSER: I'm sorry, Jeffrey, I didn't
16 know you had a follow-up question.

17 MEMBER WILLIAMS: Well, I do in an indirect
18 way. How many of the states have the clone of the
19 Inspection and Maintenance Review Committee overseeing
20 their programs?

21 MR. CARLISLE: I think we're the only one,
22 but I can ask that question.

23 CHAIR WEISSER: Rocky, did you also review
24 where the I&M programs are located in each state, what
25 agencies are --

1 MR. CARLISLE: Yes.

2 CHAIR WEISSER: And could you summarize that
3 for us?

4 MR. CARLISLE: For the most part, I think the
5 majority of them were actually an environmental agency,
6 and I don't have the exact count but I do have them
7 listed.

8 CHAIR WEISSER: I believe the number of
9 programs that reside in a consumer affairs agency is
10 one.

11 MR. CARLISLE: One, yes.

12 - o0o -

13 CHAIR WEISSER: California. Okay, I think
14 we're done with item number eight and we'll move into
15 item number nine, the legislative update, or do I have
16 an old agenda? Okay, item eight.

17 MR. CARLISLE: Eight, okay. You had me
18 confused there for a minute.

19 Okay, there's still three bills that we're
20 looking at. There was one I added to your spreadsheet
21 which was AB226 by Bermudes.

22 CHAIR WEISSER: Which tab is this, Rocky?

23 MR. CARLISLE: This is tab number four.
24 AB226 involves technician training funding, and this
25 has been bounced around on a number of bills. Right

1 now that bill is in the Senate Education Committee but
2 what it does, it allocates a portion of BAR's reserve
3 funding, I believe it's 10 percent of the reserve fund
4 will be set aside and then this money could be
5 distributed as grants to community colleges and private
6 post secondary facilities for technician training.

7 CHAIR WEISSER: In that regard, Rocky, did
8 you find what the practices were in other states in
9 terms of the training of technicians and their
10 involvement with community colleges?

11 MR. CARLISLE: Not with community colleges.

12 CHAIR WEISSER: Did you find out the role of
13 community colleges in terms of the referee program like
14 we have in California?

15 MR. CARLISLE: I'll check on that.

16 CHAIR WEISSER: Okay, thank you.

17 MEMBER HISSERICH: I want to just mention one
18 thing on that one.

19 CHAIR WEISSER: Please, John.

20 MEMBER HISSERICH: As they look at that it
21 would be interesting to know if they include in the
22 secondary educational institutions occupational centers
23 which are typically operated by what you think of as
24 through twelfth grade, but occupational centers, for
25 example in Los Angeles are operated by L.A. Unified.

1 MR. CARLISLE: Oh, yeah, the ROP Center.

2 MEMBER HISSERICH: Yeah, ROP centers and that
3 type of thing, skill centers, yeah.

4 MR. CARLISLE: You bet.

5 MEMBER HISSERICH: It would be a good venue
6 actually I think for a lot of that.

7 MR. CARLISLE: But as I say, I didn't spend a
8 lot of time on researching this bill, but right now it
9 is in Senate Education and it's coming up for hearing
10 on the 24th, which is tomorrow, so I'll keep the
11 Committee updated on the status of that bill.

12 383, which is the Montanez bill which now is
13 going to increase CAP allocation or the income
14 qualification to 200 percent instead of 225 percent,
15 that's the first thing it does. It's also changed from
16 low income motorists will be given priority by CAP if
17 the request for CAP funding exceeds the funding
18 available, because they're going to maintain the test-
19 only eligibility, and so they did make that change once
20 again. And that one was heard yesterday in Senate
21 Appropriations and it was put on suspense. I just
22 called the Legislator's office during the lunch break
23 and that's about all they could tell me.

24 CHAIR WEISSER: Well, everything that costs
25 money is put on suspense and that will all get resolved

1 in the final explosion of the session when they go
2 through the suspense files on bills that had funding
3 implication.

4 MR. CARLISLE: Okay, the other one, AB386,
5 the Leiber bill, changes authority for Smog Check from
6 BAR to ARB has been amended. Essentially what it does,
7 it modifies the funding appropriated by the
8 Legislature. I didn't complete the bill, although I
9 put down there notation, I had attached it but I did
10 not.

11 CHAIR WEISSER: Yeah, I haven't seen the
12 bill.

13 MR. CARLISLE: Essentially what it would do,
14 it would require that the Legislature appropriate the
15 funding for each department. For example, the Bureau
16 of Automotive Repair to take care of the repair
17 programs and for the Air Resources Board to take care
18 of the Smog Check programs. That is currently in
19 Senate Appropriations. It's going to be heard on the
20 25th, which is Thursday in Appropriations. There's
21 some discussion now about changing that to a 2-year
22 bill, so I don't know what's going to happen with that
23 one.

24 I also should mention --

25 CHAIR WEISSER: Well, I think the Committee

1 should know that if they haven't already been told, the
2 Administration is opposing the bill on the basis that
3 the bill itself wouldn't result in program
4 improvements. And in particular what was characterized
5 to me is their concern of the biggest program
6 improvement needed, and that's coping with the clean-
7 for-a-day syndrome.

8 MR. CARLISLE: Right.

9 CHAIR WEISSER: We've had, I will just
10 indicate that I've had two, along with the author, two
11 long meetings with the Governor's office. Jude Lamare
12 was at both also. And I want to just say publicly that
13 those meetings were the sort of meetings you hope for
14 in terms of policy context. It was a good open
15 discussion of the policy reasons why the bill was
16 introduced and of the pros and cons of the situation.
17 It was an open exchange.

18 And, you know, the administration makes a
19 decision based upon their judgment of things, but I
20 felt that we've had ample opportunity to present our
21 viewpoints on it. They don't necessarily agree with
22 them, though they understand and agree with the need
23 for program improvements. And I'm hopeful one way or
24 another that we see the variety of program improvements
25 that we've talked about that were put forward in the

1 yet-to-be-released ARB/BAR study, one way or another
2 receive attention, period.

3 I have no idea about whether it's going to be
4 a one-year bill or a two-year bill or any of that kind
5 of stuff. And I am astounded at the size of the
6 measure. I mean, it's really lengthy, and I'm not
7 quite sure why it's so lengthy for what it purports to
8 try to do. Anyhow, that's all I know, that's my story
9 and I'm sticking to it.

10 MR. CARLISLE: I was going to comment, too,
11 that recently WSPA signed on as a supporter of the
12 bill. Western States Petroleum Association.

13 CHAIR WEISSER: So we still have a pretty
14 broad coalition of businesses and environmental
15 organizations that are supporting this.

16 MR. CARLISLE: Very wide.

17 CHAIR WEISSER: Okay. Tyrone?

18 MEMBER BUCKLEY: Thank you. I was wondering
19 if you know who the opposition was for the Montanez
20 bill?

21 MR. CARLISLE: Montanez?

22 MEMBER BUCKLEY: Um-hmm.

23 MR. CARLISLE: I don't know that it had any,
24 to be honest. Oh, Department of Consumer Affairs.

25 MEMBER BUCKLEY: Thank you.

1 CHAIR WEISSER: That opposition was based on,
2 I believe, a belief that you needed to continue – what
3 is the opposition based on, do you know?

4 MR. CARLISLE: The test-only was at 225 they
5 may use up all the funds prematurely. But then, if
6 that's the case, they could have eliminated the test-
7 only requirement. I'm not sure really what all the
8 opposition was about, but –

9 CHAIR WEISSER: The notion was, as I
10 understand it, there is a belief that people who are
11 referred to test-only that some sort of penance is due
12 for their inconvenience so the state subsidizes that,
13 which to me kind of deserves further inquiry.

14 MR. CARLISLE: Well, I think in part that's
15 what the consumer information survey dispelled that
16 myth, if you will, because there was really no
17 difference in the way the consumers perceived being
18 directed to test-only versus having to go to test-and-
19 repair.

20 CHAIR WEISSER: According to that survey.

21 MR. CARLISLE: Right.

22 CHAIR WEISSER: Tyrone?

23 MEMBER BUCKLEY: I just had one more question
24 about that bill. The last part that we have in our
25 remarks section says, *Low income motorists will be*

1 *given priority if CAP assistance applications exceed*
2 *CAP funds. Don't the applications come in over the*
3 *year?*

4 CHAIR WEISSER: Yes.

5 MR. CARLISLE: Yes.

6 MEMBER BUCKLEY: And so how are they planning
7 to -- I know this isn't your bill, but --

8 MR. CARLISLE: My assumption is that, you
9 know, as the end of the fiscal year approaches if the
10 funds are running low they will start rejecting test-
11 only qualified applicants and instead just take low
12 income, but I don't have that in writing and that's
13 just an assumption on my part.

14 CHAIR WEISSER: I think it's a logical
15 assumption.

16 MR. CARLISLE: Right.

17 CHAIR WEISSER: But it's a difficult basis
18 upon which to base a program, and I think Tyrone's
19 question echoes my concern.

20 MR. CARLISLE: Yeah, you know, it would have
21 to be a projection early on in order to have any
22 effect, obviously.

23 CHAIR WEISSER: Good luck.

24 MR. CARLISLE: You know. And the final bill
25 still in play is AB578. That is the Smog Check test-

1 only station bill or the one that would allow Gold
2 Shield stations to get the first crack at directed
3 vehicles, and it was recently amended to allow 25
4 percent of top performing test-and-repair stations to
5 qualify for Gold Shield status and allows first tests
6 for directed vehicles to be performed at either test-
7 only or Gold Shield station. That was postponed at the
8 last hearing at the request of the author, and I don't
9 have a new hearing date for that bill yet.

10 CHAIR WEISSER: Yes, I understand there was a
11 very rigorous hearing.

12 MR. CARLISLE: Yes, very contentious.

13 CHAIR WEISSER: Lots of contested viewpoints.
14 Congratulate the parties for putting forward brilliant
15 testimony.

16 MR. CARLISLE: There was nothing boring at
17 that hearing.

18 CHAIR WEISSER: Mr. Ward, did you have a
19 comment you wanted to make, or do you want to wait? Is
20 it something that should wait to the end?

21 MR. WARD: (Inaudible)

22 CHAIR WEISSER: Come on up to the microphone,
23 Mr. Ward.

24 MR. WARD: It's quantitative as opposed to
25 qualitative. It's a two-year bill. She agreed by not

1 calling it for a vote and the chair said, *Then you're*
2 *making it a two-year bill*, and she agreed.

3 MR. CARLISLE: Okay, (inaudible).

4 MR. WARD: So it is a two-year bill. In the
5 last action on the bill was on the 12th of July.

6 CHAIR WEISSER: What date, the 12th of July?

7 MR. WARD: Yeah, the 12th of July. The last
8 amendment was on the 28th of June.

9 MR. CARLISLE: Right.

10 MR. WARD: And then the last action was on
11 the 12th of July. But second also, the letter of
12 support that this Committee sent was on a different
13 bill.

14 CHAIR WEISSER: And I think that's important
15 to note.

16 MR. CARLISLE: Correct.

17 MR. WARD: Yeah. Thank you.

18 MR. CARLISLE: That's why I have the date
19 there so it was prior to the amendments, and I will
20 note that.

21 CHAIR WEISSER: So I think that we need to,
22 you know, kind of revisit when we see whatever emerges
23 in the next session.

24 MR. WARD: Thank you.

25 MR. CARLISLE: Right. And that pretty much

1 concludes the legislative update.

2 CHAIR WEISSER: Very good. Are there any
3 questions on part of the Committee? Seeing none, are
4 there any comments or questions from the audience? Mr.
5 Peters.

6 MR. PETERS: Mr. Chairman and Committee, I'm
7 Charlie Peters, Clean Air Performance Professionals,
8 here interested in the consumers, the motorists
9 affected by this process.

10 Randy just brought up the issue of the
11 Committee's support for a bill that has been
12 significantly amended and I would recommend that the
13 Committee consider withdrawing their position because
14 things tend to be forgotten and we tend to be in
15 support of something that maybe we haven't discussed.

16 So I find it very interesting that I am the
17 only official opponent of AB386 and nobody else seems
18 to have stepped up to the plate to indicate any concern
19 with it at all and my position is we need to enhance
20 oversight to improve performance. But we've got WHTPA
21 and just about everybody that matters supporting the
22 bill, and the fact that there's a personal attack on me
23 here today to make sure that I don't continue to
24 participate I find very interesting, but I'm going to
25 continue to participate as long as I can.

1 CHAIR WEISSER: We encourage your
2 participation and, you know, I have no idea what you
3 mean by a personal attack here, Mr. Peters.

4 MR. PETERS: I was informed by Mr. Carlisle
5 just before the start of the meeting that sexual
6 harassment charges are being taken against me.

7 CHAIR WEISSER: Was that in this meeting?

8 MR. PETERS: That was in this Committee in
9 this room, yes sir.

10 [pause] You can continue if you like, Mr.
11 Chairman.

12 CHAIR WEISSER: You can sit down, Mr. Peters.

13 MR. PETERS: Thank you, sir.

14 CHAIR WEISSER: Mr. Peters, I just want to
15 make this clear to you. It is our obligation to
16 provide a safe workplace for our employees. We intend
17 to do that. There is no intention by any member of
18 this Committee or staff to preclude your proper
19 participation in these events.

20 - oOo -

21 We'll move on to the next item, which are the
22 report topics. And I'm not sure, Rocky, what we should
23 do in terms of these topics. We've kind of danced
24 around many of them today. Is there something that you
25 had in mind?

1 MR. CARLISLE: No, not really, I was just -

2 CHAIR WEISSER: We were just putting them on

3 there in case.

4 MR. CARLISLE: Yeah.

5 CHAIR WEISSER: Now, what I'd like to do,

6 then, is ask if any of the members of the working

7 groups on these report topics has anything they might

8 want to raise to inform the Committee of progress or

9 hurdles that need to be overcome.

10 Gideon.

11 MEMBER KRACOV: Rocky, I'm going to need your

12 help on this.

13 MR. CARLISLE: Not a problem.

14 MEMBER KRACOV: We had talked earlier today

15 and made the motion and approved the motion for the

16 consultant to help us crunch some of the data, and data

17 crunching is one of the things that we are going to

18 propose to do and hopefully initiate soon on report

19 topic 10-D, determine causes for program avoidance.

20 Rocky, maybe you want to speak to the

21 Committee about this, but what we intend to do is to

22 use the DMV database as well as the BAR smog database

23 and do some cross-checking to answer a couple questions

24 related to program avoidance, and what we were trying

25 to do is to study the rates of vehicles that aren't

1 being registered. We believe that one of the best ways
2 to figure out who should be in the program but is not
3 in the program are those vehicles that are on the road
4 and not registered, because if they're not registered,
5 we don't know if they have been smogged, and most
6 likely they haven't been.

7 So Rocky, you can pick it up from here, but
8 what we plan to do is to study certain unregistered
9 vehicles as of the date certain, for example December
10 of 2004, revisit those vehicles to see in the six or
11 eight-month period following that whether the vehicles
12 have been registered using DMV data to do that, and
13 then compare that to the smog data to figure out what
14 percentage of those vehicles do we know have been
15 smogged or haven't been smogged. Hopefully, that's
16 going to give us a sense as to how big a problem is the
17 lack of registration.

18 We've seen a lot of different numbers as to
19 how many cars on the road have not been registered, so
20 hopefully we can get a sense as to trying to track a
21 finite number of unregistered cars, how many of them
22 eventually do get registered, then take a look at what
23 we have in terms of the smog information on those cars,
24 and then using that information, try to figure out,
25 well, what's the extent of the problem, try to get some

1 information on those cars and make some assumptions as
2 to what kind of emissions problem those unregistered,
3 unsmogged cars are having. That's kind of a log
4 explanation. Rocky, you can help on that, but that's
5 where we stand on 10-D.

6 MR. CARLISLE: Yeah, we do have the datasets
7 to do that. Effectively, we have a DMV database that
8 was current as of December 2004, so we're going to just
9 track delinquencies starting, the brand new
10 delinquencies December 2004 and just track them on the
11 DMV database and see when these vehicles did in fact
12 get registered.

13 It goes back to the issue that there's two
14 types of delinquencies, one was classified by ARB as
15 instantaneous, which can be as long as two years. The
16 other was over two years.

17 CHAIR WEISSER: Excuse me. Instantaneous can
18 be as long as two years?

19 MR. CARLISLE: Correct.

20 CHAIR WEISSER: Are we talking about report
21 timing format?

22 MR. CARLISLE: Yes. Because the studies that
23 were done identified instantaneous as much as six
24 percent of the fleet was unregistered, those due for
25 registration.

1 CHAIR WEISSER: But they become registered
2 within two -

3 MR. CARLISLE: Within two years, which may be
4 twenty-three months and twenty-five days, but within
5 two years. And so, when you look at chronic
6 registrations, those over two years, those are in the
7 small percentile.

8 CHAIR WEISSER: Like a half a percent, you're
9 saying.

10 MR. CARLISLE: Yeah, .3 to .5, depending on
11 whose report you read. So what we were trying to do is
12 quantify the emissions losses that we may experience
13 with those vehicles that are the instantaneous,
14 quote/unquote, as a first cut. Because even EMFAC only
15 assumes 99 percent compliance, and I guess 99 percent
16 compliance is pretty good in most things, but with 23
17 million vehicles, like we mentioned earlier, half a
18 percent is still a big number of vehicles. But the
19 question is, is it an emissions impact, and that's the
20 unknown in this and that's what we wanted to define
21 before we go on with the survey.

22 MEMBER KRACOV: Yeah, so if I can add, Rocky.
23 What we're going to try to do is to figure out how many
24 of those unregistered vehicles become registered within
25 a six to eight-month period and study those cars that

1 are not registered, get to know them a little bit and
2 make some assumptions that then we can correlate to the
3 rest of the fleet to let us know how big a problem is
4 this unregistration and therefore folks are probably
5 running around without smog.

6 CHAIR WEISSER: You'd also be trying to
7 quantify the excess emissions that both the instant and
8 the longer term non-registrations have, right?

9 MEMBER KRACOV: Yeah, I think that's correct.
10 I think we'll probably have to do this one step at a
11 time and make sure that we're, maybe using Jeffrey's
12 help or maybe this new consultant, making sure that our
13 datasets and our assumptions are accurate, but I think
14 it could be a valuable inquiry.

15 CHAIR WEISSER: I'd certainly be sharing that
16 approach, step by step with both the Bureau and ARB in
17 case they have some advice and insights they want to
18 offer that might help, you know, make the study the
19 strongest it can be.

20 MEMBER KRACOV: Yes.

21 CHAIR WEISSER: Very good. Are there other
22 comments on other report items?

23 MEMBER KRACOV: And then if I can just follow
24 up.

25 CHAIR WEISSER: Please.

1 MEMBER KRACOV: The topic is determine the
2 causes for program avoidance, so what I think we want
3 to do first is to figure out the extent of the
4 avoidance and see what the impacts are. That is
5 hopefully something we can just do with the data in-
6 house, at which point we can potentially develop a
7 consumer survey or some follow-up to that just to try
8 to really examine the root causes and then try to find
9 some remedies.

10 CHAIR WEISSER: Finding out why will not be
11 easy, because you're going to be going to people who
12 are out of compliance and asking them -

13 MR. CARLISLE: Correct.

14 CHAIR WEISSER: - why are you beating your
15 wife or husband, you know.

16 MEMBER KRACOV: But maybe we'll be able to
17 identify those people and have a dataset and get to
18 know those vehicles, get to know those folks and it may
19 be worthwhile (inaudible).

20 CHAIR WEISSER: Oh, I think it very well
21 could be worthwhile.

22 Are there any other report subjects that
23 people want to make comments on from the Committee at
24 this point? Jeffrey?

25 MEMBER WILLIAMS: I'm hoping to have another

1 in my series, perhaps September but more likely October
2 but maybe September.

3 CHAIR WEISSER: Very good. Are there
4 comments from the audience? Questions? Mr. Peters.

5 MR. PETERS: Mr. Chairman and Committee,
6 Charlie Peters, Clean Air Performance Professionals,
7 interested in motorist issues.

8 I provided to the Committee a piece of paper
9 some time ago, bullet points that discussed issues
10 including, as an example, U-Haul, and there's
11 apparently a memo from the Air Resources Board
12 indicating the gist addressing that issue of
13 specifically rental trucks in California, there's 1.43
14 million vehicles involved there and it's talking about
15 that not getting any inspections anywhere in the
16 country, but I also think that there may very well be a
17 lot of additional vehicles in addition to the daily
18 rental trucks that may fall into that category.

19 And in addition to that, I think the second
20 part of that is that there are vehicles here with
21 California plates registered in out-of-state locations
22 which does not require Smog Check, so I think that the
23 avoidance here just based on that little segment could
24 be possibly as many as ten million cars a year, I don't
25 know. But I believe that Dr. Williams probably could

1 use his access to DMV data and look at how many
2 California plated cars are in zip codes that don't
3 require Smog Check, could just in itself create some
4 interesting consideration.

5 I think there's a significant opportunity
6 here that the Committee should address, and I think the
7 memorandum from the Air Resources Board should be
8 considered. Thank you, Mr. Chairman.

9 CHAIR WEISSER: Thank you, Mr. Peters. We'll
10 start with Mr. Hissrich.

11 MEMBER HISSERICH: I did look at those notes.
12 I noticed they were from 2003. It was interesting the
13 sequence. In July there was a note from Mr. Cackette
14 saying that it was within the law the way that they
15 were operated, but there was an August memo from
16 someone else whose name I don't remember who said, gee,
17 this could be a problem. It did indicate that if
18 they're in compliance if the vehicle leaves the state
19 once a year. Now, I have no way and I doubt that
20 there's any particular way of knowing that in fact the
21 vehicle leaves the state once a year. In some respects
22 that's kind of a DMV issue really, it's neither of
23 ours; however, I would express the concern that others
24 have expressed and Mr. Peters has repeatedly expressed
25 that, you know, if there's 1.4 million vehicles,

1 trucks, and they mention the Toyota with 200,000 miles
2 on it, that is concerning. There could be a lot of
3 stuff going on. They mention some from Oklahoma and
4 some from Indiana.

5 I also note that there are a number of cars
6 in the state, often high end cars that either have
7 Oregon or Arizona or Nevada plates, and I never quite
8 know if that's because they're expensive vehicles and
9 they're avoiding tax issues or they're just folks that
10 visit a lot from Oregon, Nevada and Arizona, or if it's
11 smog that's the principle issue, but it is an
12 interesting thing how many vehicles there are that
13 don't get inspected.

14 And, you know, as I say, it's kind of a DMV
15 issue and presumably a kind of a legal statutory issue
16 in terms of this agreement and this international
17 licensure deal that they have, which I noticed was also
18 expressed as a concern from Ontario, Canada when they
19 realized that there were a lot of vehicles in a similar
20 situation.

21 MR. CARLISLE: The IRP or International
22 Registration Plan, is a federal requirement, and 90
23 percent of the vehicles, that 1.4 million vehicles is
24 probably accurate, but 90 percent of them are diesel,
25 so they're exempt anyway other than the testing, the

1 occasional testing ARB does, but that still leaves a
2 significant number that you could say are gasoline
3 powered. However, they do fall under federal law and
4 California is not going to trump that, obviously, it's
5 a federal -- it's an International Registration Plan.

6 Like you say, as long as they travel outside
7 of California at least once in twelve months, but they
8 still pay DMV fees. They don't pay for a Smog Check
9 and that's true, but they do in fact pay DMV
10 registration fees on every one of those vehicles.

11 CHAIR WEISSER: These are light duty
12 vehicles?

13 MR. CARLISLE: Light and heavy duty vehicles.

14 CHAIR WEISSER: Hmm. Robert, did you have a
15 comment? My recollection was also that Tom Cackette
16 addressed that subject in one of the meetings and, you
17 know, indicated much to my surprise that he thought it
18 was a diminimus contribution, because it does seem to
19 me to be a potential for substantial emissions and
20 abuse, frankly.

21 MEMBER HISSERICH: Well, in this document in
22 here, which again is 2003 August, it's another person,
23 Tony Dickerson at ARB who, you know, appears that none
24 of the 1.43 million apportioned plated gasoline or
25 diesel powered vehicles ever receive an annual or

1 biennial Smog Check from any state including
2 California.

3 Actually, I didn't remember that as many of
4 them were diesels, I mean because most of those rental
5 trucks are not diesel vehicles, they're mostly gasoline
6 powered.

7 MR. CARLISLE: The IRP, though, covers all of
8 them.

9 MEMBER HISSERICH: Oh, all the semi's and
10 stuff like that that come through, yeah.

11 CHAIR WEISSER: Any other comments from
12 Committee members? Any comments from the audience?
13 Mr. Ward.

14 MR. PETERS: I just wanted to make a comment,
15 Mr. Chairman, that that document --

16 CHAIR WEISSER: You will wait your turn, Mr.
17 Peters.

18 MR. PETERS: Thank you.

19 CHAIR WEISSER: Mr. Ward.

20 MR. WARD: Thank you, Mr. Chairman. Randall
21 Ward, California Emissions Testing Industries
22 Association. The assumption that the vast majority of
23 the vehicles that aren't registered are dirty is
24 probably a pretty good assumption, and the first time
25 this was touched on was early in this program, Smog

1 Check II. The no-show rate which I've discussed many
2 times in front of this Committee was about 30 percent.
3 When they were trying to get 15 percent directed to
4 test-only, they were getting 9, 9.5, 10.2 percent, and
5 at the time DMV had a historic no-show rate of between,
6 I think 3 and 4 percent. But what the conclusion was
7 is that no-show rate was all the bottom end of the
8 spectrum, which were the high emitter profile vehicles,
9 so just for your information.

10 CHAIR WEISSER: Thank you. Other questions,
11 comments? Mr. Peters.

12 MR. PETERS: Thank you, Mr. Chairman. I just
13 wanted to comment on the document provided to you
14 today, the memo from the Air Resources Board. It says
15 that that document was created in 2003. I do not know
16 where that document came from, it just showed up in my
17 fax machine approximately three weeks ago. I cannot
18 even tell you that in fact that document is valid.
19 However, it does have all the right little nice stuff
20 on it. It had no TTI on it, it had no information
21 where it came from. I had shared with the Committee
22 that I heard that a report was made. I had that report
23 read to me some time ago but I cannot in fact tell you
24 that in fact that report is valid, sir.

25 CHAIR WEISSER: This report, you mean in this

1 letter.

2 MR. PETERS: That memo I cannot confirm to
3 you that in fact that is an Air Resources Board
4 memorandum.

5 CHAIR WEISSER: Thank you. Any other
6 comments or questions? John? Are there any other
7 items in this item?

8 - o0o -

9 We're then going to take any public comments
10 on any issue or item that you might want to raise.
11 We'll start with Bud and then move to Chris.

12 MR. RICE: Thank you, Mr. Chairman. A quick
13 little laundry list of open items here I wanted to run
14 down.

15 The first one was in response to Strategica.
16 Am I saying that correctly, Strategica? They were
17 talking about notices of violation and how they've gone
18 to a verbal reprimand. I'll tell you that I went to
19 some of the workshops that the BAR was putting on for
20 those, spoke basically against that process of having a
21 verbal reprimand, preferring a written reprimand as
22 opposed to a verbal one. And they had a pilot program
23 where they went out and asked shops which would you
24 prefer, written or verbal, and I think the way the
25 question was worded, it drove shops to think that it

1 was in their best interest to take a verbal one versus
2 a written one because they thought it was just a couple
3 of guys talking about something that they might want to
4 concentrate on or they had an issue with, not knowing
5 that behind the scenes there was still going to be a
6 written thing going on in their file anyway, so I would
7 just as soon have it be a written reprimand no matter
8 what. Then everybody knows what's going on, there's
9 documentation that says they had a conversation with
10 you, and I think that that's the way it ought to be
11 done.

12 Second comment was about Mr. DeCota's asking
13 for a research document in terms of the business
14 economics. That kind of goes back a little bit to the
15 comment I had made maybe two sessions ago where in a
16 means of trying to be humorous I brought up the MTBE
17 issue where sometimes rules and regulations are put
18 into place without benefit of knowing what the outcomes
19 were going to be. And I think Mr. DeCota is correct in
20 saying that sometimes rules or regulations are put in
21 place here, or recommendations are made here that has
22 an impact on the marketplace. And I would also like to
23 back that by saying I think we ought to have a report
24 like that that kind of delves into the things that
25 happen when decisions get made against, you know, for

1 the Smog Check Program and what happens to the
2 marketplace, because it's huge, it is huge.

3 Third thing is, as I stand in front of you
4 I'm actually two guys in one. One of them is I do have
5 a vested interest in the Smog Check Program because I'm
6 a business guy, business owner, and we provide Smog
7 Check and repair services to the public, so I'm that
8 guy. Then I'm also this other guy who likes breathing
9 the air just like you guys do.

10 And if in fact your charge is to protect the
11 environment and provide a good Smog Check Program, I
12 think you got to figure out how to do it better. In
13 other words, don't take cars out, put them in. I mean,
14 if your job is to have a good Smog Check Program, don't
15 be figuring out ways to get people to get out of the
16 program, look for ways to get people into the program,
17 that's what I think you ought to be doing. Don't be
18 swapping pollution credits around for cleaning up one
19 industry by taking credits from another industry. We
20 cleaned up our mess. Let them clean up their mess, you
21 know. So look for ways to do it better. Thank you.

22 CHAIR WEISSER: Thanks, Bud.

23 MEMBER HISSERICH: I don't see a conflict in
24 your two roles, Bud.

25 CHAIR WEISSER: Chris.

1 MR. ERVINE: Chris Ervine, Coalition of State
2 Test-and-repair Stations. Over the past few years I've
3 never really bad-mouthed test-only stations or anything
4 about them, but in a recent Senate Transportation
5 Committee hearing on AB578 I had to listen to Randy
6 Ward stand up there and accuse the test-and-repair
7 industry of being a bunch of thieves and incompetents,
8 and specifically he zeroed in on the Gold Shield test-
9 and-repair, claiming that all these other test-and-
10 repair stations could repair smogs for an average of
11 \$180 while the Gold Shield system was charging the
12 state \$360 to repair vehicles and that there was no
13 monitoring of this.

14 Well, I'd like to explain what goes on in a
15 Gold Shield station. We have to, first off, make sure
16 that the consumer has a letter that says that he is
17 eligible. Then we get the car in. After we've written
18 up a proper repair order and everything, we get the car
19 in and we do an initial test just as the car came in
20 off the street, we do a full blown smog test on that
21 vehicle.

22 Based on that, whether it passes or fails,
23 then we proceed with diagnostics. Once we have our
24 diagnostics, we put it all down on paper and we submit
25 it to the CAP program where it is reviewed on an

1 individual vehicle basis, and then either all or a
2 portion of it may be approved for repairs.

3 After that repair is made, there may be a
4 second or a third submission for additional repairs
5 where each time that submission is reviewed on an
6 individual basis.

7 Once that vehicle is finally repaired, and
8 this is something that came to my knowledge just
9 recently, CAP contacts the consumer and I believe the
10 percentage that they gave me was 20 percent of the
11 vehicles that are repaired by CAP are contacted by CAP,
12 the consumer is questioned as to how everything was
13 done and the vehicles are inspected by a CAP
14 representative.

15 The thing that upsets me is that Mike
16 Lafferty was sitting right there in that Senate
17 Transportation Committee hearing. He's the head of the
18 CAP program. Dick Ross was sitting there, and none of
19 them rebutted any of these claims that were made by
20 Randy Ward.

21 So these are some things and I would just
22 like to bring to this Committee and provide you with.
23 Thank you.

24 CHAIR WEISSER: Thank you, Chris.

25 Mr. Ward. I see Chris has gotten the timing

1 down right. That's about the second or third time that
2 it rings on the way back to his chair.

3 MR. WARD: Mr. Chair, Randall Ward, Executive
4 Director of the California Emissions Testing Industries
5 Association. I'm not, other than to say that any
6 statistics that I presented at that committee hearing
7 were off the BAR's website or strictly from BAR data.
8 Other than that I'm not going to respond. He's - Mr.
9 Lafferty wouldn't have had anything to argue with.

10 A couple of questions. With regard to Mr.
11 Howe's presentation today, I for one have very serious
12 concerns about the effort of the enforcement monitor
13 and I don't know what if anything this Committee would
14 choose to do, but I do remember this Committee devoted
15 at least two full meetings to the issue of enforcement
16 recognizing that literally all industry had serious
17 concerns with regard to enforcement, and given the
18 number of venues it was coming from, it actually went
19 and became a big issue. The Legislature addressed that
20 issue, subsequently adopted legislation that required
21 the enforcement monitor.

22 The contract management of that enforcement
23 monitor is something that I have no control over. I
24 and other from the trade associations have seen what we
25 view to be a lot of wasted time initially on the part

1 of the enforcement monitor. I listened to some of the
2 comments that were made today about his conclusions,
3 and I'm wondering if he's looking at the same
4 information that I'm aware of. And I've given him just
5 a little bit and I told him I can give him a lot more
6 whenever he's ready, and I've not heard back.

7 In any event, I don't know whether he's
8 overwhelmed, but I did not take very serious the fact
9 that he had lots of experience in doing this and some
10 of this conclusions were simply these are the kinds of
11 conclusions I come up with everywhere so it's not
12 surprise that these are the conclusions I'm coming up
13 with here. I think there are some extraordinary issues
14 here that need to be dealt with and I'd like to see the
15 Committee focus a little bit on enforcement.

16 Secondly, I'm not quite clear on the
17 priorities for your contractor. It sounded as though,
18 Mr. Chairman, you said that you wanted an assessment
19 from members and the public that in October once you
20 were back you would begin kind of defining what those
21 priorities were. Is that --

22 CHAIR WEISSER: Oh, I think you're going to
23 find, I think we'll have immediate use for the
24 contractor with work that's underway right now. I
25 would like to see in October a step back and kind of do

1 an overall assessment of what our research needs are
2 and how we may be able to fill them.

3 I'm going to assume like most things in life
4 that the demands that we might have for research will
5 exceed our ability to do, we just won't have the
6 resources necessary to do all the research, so what I
7 was talking about is let's try to get a handle on what
8 potential research ideas there might be, you know, that
9 people are interested in pursuing in September, and
10 then maybe doing, you know, an analysis of some sort
11 together to see what are our priorities and do that in
12 September or October.

13 I'd also like to hear suggestions from the
14 public in terms of what research they think we might
15 want to be doing, to fit into that process.

16 Am I being clear or --

17 MR. WARD: Yeah, I understand. I just
18 recall, Mr. Chair, that this Committee, the vast
19 majority of the members are still here in attendance
20 went through iteration after iteration of defining and
21 honing down its priorities, many of which it could not
22 assume, rightly assume (inaudible).

23 CHAIR WEISSER: Well, and if you look at the
24 list on every agenda, those are the issues that we had
25 said we're interested in that we weren't able to

1 completely address in our report last year, and I think
2 we almost characterized that as an interim report. I
3 know we put in the report the fact that we couldn't do
4 everything we wanted to do.

5 MR. WARD: Okay. Anyway, thank you.

6 CHAIR WEISSER: I'm missing something, Randy.
7 Are you thinking we're just going too far?

8 MR. WARD: No, no, I'm not. In fact, I think
9 that, you know, I'm as frustrated as Committee members
10 are with not having the ability to get my finger closer
11 to the pulse of much of what is going on and having to
12 rely on agencies that have other priorities other than
13 the IMRC, so I'm just, I'm trying to see what way
14 you're going here, what is the first priority, what is
15 the consultant going to be working on.

16 CHAIR WEISSER: Well, first of all, I don't
17 think there's going to be a problem if this consultant
18 shows up to work on Monday or Wednesday, this
19 Wednesday, tomorrow, finding work for him to do. We
20 already have analytical work that, you know, we could
21 use an expert's help on right now.

22 MR. WARD: What you're saying is that based
23 on your agenda here, these are the --

24 CHAIR WEISSER: Those are still the issues
25 that we're focused on.

1 MR. WARD: - the subcommittee issues, issues
2 such as Mr. Kracov was discussing not necessarily
3 issues that Dennis DeCota was raising -

4 CHAIR WEISSER: That's correct.

5 MR. WARD: - but new issues over and above.

6 CHAIR WEISSER: That's correct. But we now
7 have a Committee member Mr. DeCota who's making a
8 proposal that we consider doing this. That proposal
9 needs to be evaluated in the context of what our
10 complete, you know, demands on our resources are. I'd
11 love to be all things for all people, we just don't
12 have the resources.

13 MR. WARD: My view is that proposal is
14 outside of the scope of (inaudible).

15 CHAIR WEISSER: It may be, but this Committee
16 if it so decides can change its priorities, Randy.

17 MR. WARD: Fair enough.

18 CHAIR WEISSER: Randy, I'm concerned
19 regarding the first issue that you raised regarding the
20 report that we received from Strategica, and I'm
21 concerned that you didn't raise that while he was here
22 and allow him to hear you firsthand and respond to you.
23 Your concerned and frustrated that, I'm hearing you
24 think it might be another whitewash or something.

25 MR. WARD: Well, I thought I tempered my

1 remarks. I did to some extent and I indicated that I
2 had not been --

3 CHAIR WEISSER: You're way too polite.

4 MR. WARD: That's never been accused of me
5 before. In any event, I did make a couple of comments
6 that I thought were relevant, and we weren't invited
7 and the initial mission or his initial mission design I
8 thought was poorly scoped out, as did others so I'm not
9 alone in this criticism. You know, at the same time
10 we're still trying to work with the individual so
11 there's a delicate balance there.

12 CHAIR WEISSER: Yeah.

13 MR. WARD: So what do you call that, the
14 Hobson's Choice? Anyway, thank you, Mr. Chair.

15 CHAIR WEISSER: Thank you, Randy. Are there
16 any other comments from people who haven't spoken yet
17 in the audience? Mr. Peters.

18 MR. PETERS: Mr. Chairman and Committee,
19 Charlie Peters, Clean Air Performance Professionals.
20 This is public comment section?

21 CHAIR WEISSER: You got it.

22 MR. PETERS: Just as a respond to what the
23 previous speaker indicated. I attended the Bureau of
24 Automotive Repair advisory meeting, provided
25 documentation to this monitor, asked to speak to him,

1 asked to be able to participate. Made a phone call
2 there and was never informed of any of the process, was
3 never allowed to participate or put any input in
4 whatsoever. I called him last night, gave him
5 something today, so Randy's not the only one who didn't
6 get an opportunity.

7 I would also like to possibly share that you
8 indicated that your last Smog Check kind of you felt
9 like you didn't necessarily get a fair outcome.

10 CHAIR WEISSER: I didn't say that. I was an
11 ignorant consumer who didn't do his homework.

12 MR. PETERS: I'm kind of ignorant as well,
13 and I have a car that's got 133,000 miles on it, came
14 from New Jersey. Went into the inspection program
15 there where they failed it for smoke. Got a
16 significant repair. Got a fraudulent certificate was
17 given to me. Came out here, got a certificate in
18 California that doesn't require anything on smoke.

19 I participated in Smog Check about two weeks
20 ago. Somebody that's actually in this room's business
21 I attended, was kind of an interesting process and they
22 stole my smoke, it's gone. My gas mileage more than
23 doubled, my performance more than doubled and my smoke
24 is completely gone. I know that's just anecdotal, but
25 just to share with you, sir, this program ripped me off

1 and I wanted you to be aware of that, sir.

2 CHAIR WEISSER: May we all be so ripped off.

3 Thank you very much, Mr. Peters.

4 Seeing no more hands waving in the public
5 except for Chris's who is standing me and Lake Tahoe,
6 please join us, come up, Chris.

7 MR. ERVINE: Chris Ervine with STARS. I just
8 wanted to second Dennis's disapproval of the consumer
9 information survey. I think the survey was incomplete
10 and possibly slanted and the questions were asked in a
11 way that indicated that the consumer was looking for a
12 specific thing by choice rather than by necessity, and
13 in that I mean they asked him, *when you wanted your*
14 *smog, did you want a test-only? Well, yeah, I wanted*
15 *the test-only because it system on my certificate here*
16 *that I got to go to test-only. Actually, I'd rather go*
17 *to the guy that's been fixing my car for the last 20*
18 *years. And I think that that question needed to be*
19 *asked is, would you rather go to a test-and-repair or*
20 *would you rather go to be directed to a place that you*
21 *have no choice for?*

22 CHAIR WEISSER: Thank you, Chris. I'm
23 disappointed that issues associated with the specific
24 structure of that survey or the questions in the survey
25 were not raised in a fashion that would have allowed us

1 to address them if they needed to be addressed. I'll
2 leave it at that.

3 This survey was developed in a public
4 setting, shared in a public setting, discussed in a
5 public setting, evaluated in a public setting, voted on
6 in a public setting, and sent out, and we had plenty of
7 opportunity to get input. I'm done listening for
8 today. I'm done listening for today. It's just if
9 you're given an opportunity to participate in a public
10 setting, folks, take advantage of it. Don't come back
11 later and say, gee, you screwed up, you should have
12 done this. If you didn't tell us, gee, why don't you
13 try to do this.

14 MR. ERVINE: On that particular day the
15 questionnaire in question, nobody in the audience had
16 access to it. It was printed up half-way through the
17 meeting and then we had the hearing on it. Nobody had
18 a real good chance to review that, and I did bring up
19 questions about that at that point, but nobody had a
20 really good chance to review that at that time.

21 CHAIR WEISSER: If that's the case my memory
22 fails me. Then on behalf of the Committee I would
23 apologize for my recent rant, because you need to have
24 that stuff in front of you in order to do it, in order
25 to make a, you know, reasonable public comments, and

1 we'll try very hard to ensure that if that in fact did
2 occur that it doesn't occur again.

3 Yes, Mr. Carlisle?

4 MR. CARLISLE: Just want to make one comment.
5 Prior to that ever being completed, we did send it out
6 to all interested parties. We did have a special
7 meeting in this building specifically for industry in
8 the evening when it would be convenient for them to
9 attend. Nobody attended that, I might add, but we did
10 make every accommodation.

11 CHAIR WEISSER: Thank you. We're trying to
12 do the best on our side. It really, it frustrates me
13 that we don't get the benefit of the constructive ideas
14 that you have when we have an opportunity. It's just
15 frustrating. All right, I think we're all -

16 MR. ERVINE: (Inaudible) my questions
17 concerning those specific questions.

18 CHAIR WEISSER: I appreciate them and
19 apologize for my latest rant.

20 Seeing no more hands in the audience I'm
21 looking forward to someone making a motion for
22 adjournment, and Gideon rushes to make that motion.

23 MEMBER KRACOV: I move.

24 CHAIR WEISSER: It's seconded by John. Is
25 there any discussion? Hearing none, all in favor say

1 aye. Oh, Rocky?

2 MR. CARLISLE: I just have one quick comment.

3 I want to let the Committee know that I'm leaving the
4 9th and I won't be back until the 20th.

5 CHAIR WEISSER: I don't remember a resolution
6 being proposed to approve of this departure. Where are
7 you going, Rocky?

8 MR. CARLISLE: Yellowstone.

9 CHAIR WEISSER: Cool.

10 MR. CARLISLE: Study the environment.

11 CHAIR WEISSER: Very good. Take your cell
12 phone.

13 All in favor of adjournment signify by saying
14 aye.

15 IN UNISON: Aye.

16 CHAIR WEISSER: Any opposed? No. We're
17 adjourned. Thank you.

18 **(Meeting Adjourned)**

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TRANSCRIBER'S CERTIFICATION

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This is to certify that I, TERRI HARPER,
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23, 2005; that the pages numbered 1 through 214
constitute said transcript; that the same is a complete
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Dated September 6, 2005.

TERRI HARPER, Lead Transcriber
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